

# ACORDA THERAPEUTICS INC

## FORM S-1 (Securities Registration Statement)

Filed 10/05/05

Address      420 SAW MILL RIVER ROAD  
                  ARDSLEY, NY 10502

Telephone     914-347-4300

                  CIK      0001008848

Symbol        ACOR

SIC Code      2836 - Biological Products, Except Diagnostic Substances

Industry      Biotechnology & Drugs

Sector        Healthcare

Fiscal Year    12/31

[QuickLinks](#) -- Click here to rapidly navigate through this document

As filed with the Securities and Exchange Commission on October 5, 2005

Registration No. 333-

---

## SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

---

### FORM S-1 REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

---

## ACORDA THERAPEUTICS, INC.

(Exact Name of Registrant as Specified in its Charter)

**Delaware**  
(State or Other Jurisdiction of  
Incorporation or Organization)

**2836**  
(Primary Standard Industrial  
Classification Code Number)

**13-3831168**  
(I.R.S. Employer Identification Number)

**15 Skyline Drive  
Hawthorne, New York 10532  
(914) 347-4300**

(Address, Including Zip Code, and Telephone Number,  
Including Area Code, of Registrant's Principal Executive Offices)

**Ron Cohen  
Chief Executive Officer  
15 Skyline Drive  
Hawthorne, New York 10532  
(914) 347-4300**

(Name, Address, Including Zip Code, and Telephone Number,  
Including Area Code, of Agent For Service)

---

### Copy To:

**Ellen B. Corensweat  
Covington & Burling  
1330 Avenue of the Americas  
New York, New York 10019  
(212) 841-1000**

**Danielle Carbone  
Shearman & Sterling LLP  
599 Lexington Avenue  
New York, New York 10022  
(212) 848-4000**

**Approximate date of commencement of proposed sale to the public:** As soon as practicable after the effective date of this Registration Statement.

If the securities being registered on this form are being offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box.

If this form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, check the following

box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If delivery of the prospectus is expected to be made pursuant to Rule 434 under the Securities Act, please check the following box.

---

#### CALCULATION OF REGISTRATION FEE

---

Title of Each Class of Securities to Be Registered	Proposed Maximum Aggregate Offering Price(1)	Amount of Registration Fee
Common Stock, par value \$0.001 per share	\$86,250,000	\$10,152.00

- (1) Estimated solely for the purpose of determining the registration fee pursuant to Rule 457(o) promulgated under the Securities Act of 1933, as amended. The proposed maximum aggregate offering price includes amounts attributable to shares that the underwriters have the option to purchase to cover any over-allotments.
- 

The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933, or until this registration statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.

---

---

---

The information in this prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and is not soliciting offers to buy these securities in any state where the offer or sale is not permitted.

SUBJECT TO COMPLETION, DATED OCTOBER 5, 2005

Prospectus

Shares



Common Stock

Acorda Therapeutics, Inc. is offering        shares of common stock. This is our initial public offering, and no public market currently exists for our shares. We anticipate that the initial public offering price will be between \$        and \$        per share. After the offering, the market price for our shares may be outside this range.

We will apply to list our common stock on the Nasdaq National Market under the symbol "ACOR."

**Investing in our common stock involves a high degree of risk. See "Risk Factors" beginning on page 8.**

	Per Share	Total
Offering price	\$	\$
Discounts and commissions to underwriters	\$	\$
Offering proceeds to Acorda Therapeutics, Inc., before expenses	\$	\$

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved these securities or determined if this prospectus is accurate or complete. Any representation to the contrary is a criminal offense.

We have granted the underwriters the right to purchase up to        additional shares of common stock to cover any over-allotments. The underwriters can exercise this right at any time within 30 days after the offering. The underwriters expect to deliver the shares on or about       , 2005.

Banc of America Securities LLC

Lazard Capital Markets

Piper Jaffray

SG Cowen & Co.



You should rely only on the information contained in this prospectus. We have not, and the underwriters have not, authorized anyone to provide you with different information. We are not making offers to sell or seeking offers to buy these securities in any jurisdiction where the offer or sale is not permitted. You should assume that the information contained in this prospectus is accurate as of the date on the front of this prospectus only. Our business, financial condition, results of operations and prospects may have changed since that date.

---

## TABLE OF CONTENTS

	Page
Summary	1
Risk Factors	8
Forward-Looking Statements	24
Use of Proceeds	25
Dividend Policy	25
Capitalization	26
Dilution	28
Selected Consolidated Financial Data	30
Management's Discussion and Analysis of Financial Condition and Results of Operations	33
Business	53
Management	86
Summary Compensation Table	92
Certain Relationships and Related Transactions	96
Principal Stockholders	99
Description of Capital Stock	101
Shares Eligible for Future Sale	105
Certain United States Federal Income and Estate Tax Consequences to Non-U.S. Holders	107
Underwriting	110
Legal Matters	116
Experts	116
Where You Can Find Additional Information	116

---

## SUMMARY

*This summary highlights information contained elsewhere in this prospectus. You should read the entire prospectus carefully before making an investment decision.*

### Overview

We are a commercial-stage biopharmaceutical company dedicated to the identification, development and commercialization of novel therapies that improve neurological function in people with multiple sclerosis, or MS, spinal cord injury, or SCI, and other disorders of the central nervous system, or CNS. Our marketed product, Zanaflex Capsules, is FDA-approved for the management of spasticity. Our lead product candidate, Fampridine-SR, is in a Phase 3 clinical trial for the improvement of walking ability in people with MS. Our preclinical programs also target MS and SCI, as well as other CNS disorders, including stroke and traumatic brain injury.

Approximately 650,000 people in the United States suffer from MS or SCI and the combined annual cost of treatment for these conditions exceeds \$13 billion. It is estimated that a total of approximately 9 million people live with the long-term consequences of traumatic brain injury and stroke.

Our goal is to continue to grow as a fully-integrated biopharmaceutical company by commercializing pharmaceutical products, developing our product candidates and advancing our preclinical programs for these large and underserved markets. We plan to accomplish this through our sales and marketing infrastructure, our extensive scientific and medical network, our partnerships and our clinical and management experience.

### Our Product Pipeline

#### Zanaflex

Our products, Zanaflex Capsules and Zanaflex tablets, are FDA-approved for the management of spasticity, a symptom of conditions such as MS and SCI that is commonly characterized by stiffness and rigidity, restriction of movement and painful muscle spasms. Zanaflex Capsules and Zanaflex tablets contain tizanidine hydrochloride, or tizanidine, one of the two leading treatments currently used for the management of spasticity. We acquired Zanaflex Capsules and Zanaflex tablets from a wholly-owned subsidiary of Elan Corporation, plc, or Elan, in July 2004. This strategic acquisition provided us with the opportunity to build a commercial infrastructure, develop sales and marketing expertise and create a foundation for future product launches, in addition to generating product revenue.

In April 2005, we launched Zanaflex Capsules, a new capsule formulation of tizanidine. This product is protected by an issued U.S. patent. Zanaflex tablets lost compound patent protection in 2002 and now compete with 11 generic versions of tizanidine tablets.

We believe that Zanaflex Capsules offer important benefits over Zanaflex tablets and generic tizanidine tablets. When taken with food, Zanaflex Capsules have a different blood absorption profile, referred to as pharmacokinetic profile, than Zanaflex tablets and generic tizanidine tablets, generally resulting in a lower level and more gradual rise of peak levels of tizanidine in a patient's blood. As a result of this different pharmacokinetic profile, Zanaflex tablets and generic tizanidine tablets are not therapeutically equivalent, or AB-rated, with Zanaflex Capsules. Therefore, under state pharmacy laws, prescriptions written for Zanaflex Capsules may not properly be filled by the pharmacist with Zanaflex tablets or generic tizanidine tablets. Zanaflex Capsules are also available in a higher dose, which gives patients and prescribers an additional choice in dosing and an opportunity to reduce the number of pills a person must take daily. In addition, people who have difficulty swallowing may find Zanaflex Capsules easier to take.

To support our commercialization of Zanaflex Capsules, we have established a sales and marketing infrastructure consisting of our internal specialty sales force, a contract sales force and a pharmaceutical telesales group. Our internal specialty sales force consists of 14 sales professionals who call on neurologists and other prescribers specializing in treating patients with conditions that involve spasticity. Members of this sales force also call on managed care organizations, pharmacists and wholesale drug distribution customers. Our contract sales force is provided by Cardinal Health PTS, LLC, or Cardinal Health, and consists of approximately 160 sales representatives who market Zanaflex Capsules to primary care physicians. We also have a contract with Access Worldwide Communications to provide a small, dedicated sales force of pharmaceutical telesales professionals to contact primary care physicians, specialty physicians and pharmacists. Our current sales and marketing infrastructure enables us to reach virtually all the potential high-volume prescribers of Zanaflex Capsules. We believe that these prescribers are also potential high-volume prescribers for our lead product candidate, Fampridine-SR, if approved.

### **Fampridine-SR**

Fampridine-SR is currently in a Phase 3 clinical trial for the improvement of walking ability in people with MS. The trial is being conducted pursuant to a Special Protocol Assessment, or SPA, with the FDA. The FDA has agreed that, if successful, this trial could qualify as one of the pivotal efficacy studies required for drug approval. Fampridine-SR is a small molecule drug contained in a sustained release oral tablet form. Laboratory studies have shown that fampridine, the active molecule in Fampridine-SR, improves impulse conduction in nerve fibers in which the insulating outer layer, called the myelin sheath, has been damaged. This damage may be caused by the body's own immune system, in the case of MS, or by physical trauma, in the case of SCI.

More than 800 people have been treated with Fampridine-SR in over 25 clinical trials, including nine clinical trials in MS and 11 clinical trials in SCI. In six Phase 2 clinical trials, treatment with Fampridine-SR has been associated with a variety of neurological benefits in people with MS or SCI. In our most recently completed Phase 2 clinical trial, there was a trend toward improvement in the primary endpoint of walking speed and, when analyzed using the same methodology that the FDA has now agreed to in the SPA for our Phase 3 clinical trial, these results would have been statistically significant. We expect the recruitment period for the current Phase 3 clinical trial, which began in June 2005, to require approximately six to eight months. The treatment period is 14 weeks and the subjects are involved in trial procedures for approximately five months. We expect to be able to evaluate data from this clinical trial in the third quarter of 2006.

We believe Fampridine-SR is the first potential therapy in late-stage clinical development for MS that seeks to improve the function of damaged nerve fibers, rather than only treating the symptoms of MS or slowing the progression of disease. To our knowledge, there are no current drug therapies that improve walking ability in people with MS. We plan to commercialize Fampridine-SR, if approved, ourselves in the United States, and possibly Canada, and with partners in various markets throughout the rest of the world.

## **Preclinical programs**

We have three preclinical programs focused on novel approaches to repair damaged components of the CNS:

- *Chondroitinase.* This program is based on the concept of breaking down the matrix of scar tissue that develops as a result of an injury to the CNS. Published research has demonstrated that this scar matrix is partly responsible for limiting the regeneration of nerve fibers in the CNS and restricting their ability to modify existing neural connections. Independent academic laboratories have also published animal studies showing that application of chondroitinase results in recovery of function following injuries to various areas of the brain or spinal cord.
- *Neuregulins.* This program is based on using GGF-2, a neuregulin growth factor to stimulate remyelination, or repair of the myelin sheath. In published studies, GGF-2 has been shown to stimulate remyelination in animal models of MS and to have other effects in neural protection and repair.
- *Remyelinating antibodies.* This program is based on more than 15 years of research performed at Mayo Clinic. Studies have demonstrated the ability of this family of antibodies to stimulate remyelination in three different animal models of MS.

We believe that all of our preclinical programs have the potential to be first-in-class therapies. In addition to applicability in MS, SCI and various other CNS disorders, we believe that our preclinical programs also may have applicability in such fields as orthopedics, cardiology, oncology and ophthalmology.

## **Our Strategy**

Our strategy is to continue to grow as a fully-integrated biopharmaceutical company focused on the identification, development and commercialization of a range of nervous system therapeutics. We are using our scientific and clinical expertise in MS and SCI as strategic points of access to additional CNS markets, including stroke and traumatic brain injury. Key aspects of our strategy are to:

- maximize our revenue opportunity for Zanaflex Capsules;
- complete the clinical development and obtain regulatory approval for Fampridine-SR in MS;
- leverage the commercial presence of Zanaflex Capsules for the potential market launch of Fampridine-SR;
- advance our pipeline of preclinical programs to clinical trials; and
- pursue additional alliances for approved and development-stage products.

We have established an advisory team and network of well-recognized scientists, clinicians and opinion leaders in the fields of MS and SCI. Depending on their expertise, these advisors provide assistance in trial design, conduct clinical trials, keep us apprised of the latest scientific advances and help us identify and evaluate business development opportunities. In addition, we have recruited over 35 MS centers and 80 SCI rehabilitation centers in the United States and Canada to conduct our clinical trials. Our clinical management team has extensive experience in the areas of MS and SCI and works closely with this network.

## **Risks Associated with our Business**

Our business is subject to numerous risks, as more fully described in the section entitled "Risk Factors" immediately following this prospectus summary. We may be unable, for many reasons, including those that are beyond our control, to implement our current business strategy. Those reasons

could include failure to successfully promote Zanaflex Capsules and any other future marketed products; delays in obtaining, or a failure to obtain, regulatory approval for our product candidates; and failure to maintain and to protect our proprietary intellectual property assets, among others. The information about our preclinical and clinical trials may be useful to you in evaluating our company's current stage of development and our near-term and long-term prospects; however, you should note that of the large number of drugs in development only a small percentage successfully complete the FDA regulatory approval process and are commercialized.

We have a limited operating history and, as of June 30, 2005, had an accumulated deficit of approximately \$191.0 million. We expect to incur losses for at least the next several years. We had net losses of \$18.5 million and \$44.7 million for the six months ended June 30, 2005 and for the year ended December 31, 2004, respectively. We are unable to predict the extent of future losses or when we will become profitable, if at all. Even if we succeed in promoting Zanaflex Capsules and developing and commercializing one or more of our product candidates, we may never generate sufficient sales revenue to achieve and sustain profitability.

### **Corporate Information**

We were incorporated in 1995 as a Delaware corporation. Our principal executive offices are located at 15 Skyline Drive, Hawthorne, New York 10532. Our telephone number is (914) 347-4300. Our website is [www.acorda.com](http://www.acorda.com). The information on our website is not part of this prospectus.

"Acorda Therapeutics" is a registered trademark that we own and "Zanaflex" is a registered trademark that we exclusively license. We have pending U.S. trademark applications for our logo and "Zanaflex Capsules." Other trademarks, trade names and service marks used in this prospectus are the property of their respective owners.

## THE OFFERING

Common stock offered	shares
Common stock outstanding after this offering	shares
Use of proceeds	We intend to use the net proceeds of this offering for sales and marketing activities, clinical and preclinical development programs and for general corporate purposes. See "Use of Proceeds."
Proposed Nasdaq National Market symbol	ACOR
Risk factors	See "Risk Factors" and the other information included in this prospectus for a discussion of factors you should carefully consider before deciding to invest in shares of our common stock.

The number of shares of common stock to be outstanding after this offering is based on the number of shares outstanding as of June 30, 2005, and reflects or assumes the following:

- the conversion of all outstanding shares of our convertible preferred stock and mandatorily redeemable convertible preferred stock into 13,338,356 shares of our common stock upon the closing of this offering;
- no exercise by the underwriters of their over-allotment option to purchase up to additional shares; and
- a 1-for-1.3 reverse stock split of our common stock that we intend to effect on or about the date of this prospectus.

In the table above, the number of shares of common stock outstanding after this offering excludes, as of June 30, 2005:

- 1,239,257 shares of common stock issuable upon the exercise of outstanding options and warrants to purchase our common stock, at a weighted average exercise price of \$3.71 per share;
- 749,176 restricted share grants entitling the share owners the right to acquire shares of common stock;
- 278,339 shares of common stock issuable upon the conversion of outstanding convertible promissory notes; and
- 535,522 shares of common stock reserved for issuance under our stock option plan.

## SUMMARY CONSOLIDATED FINANCIAL DATA

The following table presents a summary of our historical financial information. You should read this information in conjunction with our consolidated financial statements and related notes and the information under "Selected Consolidated Financial Data" and "Management's Discussion and Analysis of Financial Condition and Results of Operations" included elsewhere in this prospectus. We changed our fiscal year end from June 30 to December 31, beginning with the six months ended December 31, 2003.

	Year Ended June 30,			Six Months Ended December 31,	Year Ended December 31,	Six Months Ended June 30,	
	2001	2002	2003	2003	2004	2004	2005
	(in thousands, except per share data)						
<b>Statement of Operations Data:</b>							
Gross sales—Zanaflex	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ 478
Less: discounts and allowances	—	—	—	—	(4,417)	—	(844)
Net sales	—	—	—	—	(4,417)	—	(366)
Grant revenue	462	132	474	382	479	317	155
Total net revenue	462	132	474	382	(3,938)	317	(211)
Less: cost of sales	—	—	—	—	(771)	—	(1,401)
Gross profit	462	132	474	382	(4,709)	317	(1,612)
Operating expenses:							
Research and development	6,142	11,147	17,527	16,743	21,999	13,502	7,143
Research and development—related party	2,223	4,687	2,265	3,343	—	—	—
Sales and marketing	—	—	—	—	4,662	1,652	5,535
General and administrative	3,489	6,636	6,388	17,069	13,397	8,070	3,933
Total operating expenses	11,854	22,470	26,180	37,155	40,058	23,224	16,611
Operating loss	(11,392)	(22,338)	(25,706)	(36,773)	(44,767)	(22,907)	(18,223)
Other income (expense):							
Interest and amortization of debt discount expense	—	—	(78)	(38)	(385)	(208)	(520)
Interest and amortization of debt discount expense—related party	(443)	(408)	(369)	(184)	—	—	—
Interest income	1,824	984	393	276	409	237	258
Other income	—	—	26	7	2	2	1
Total other income (expense)	1,381	576	(28)	61	26	31	(261)
Minority interest—related party	699	580	—	—	—	—	—
Net loss	(9,313)	(21,181)	(25,734)	(36,712)	(44,741)	(22,876)	(18,484)
Beneficial conversion feature, accretion of issuance costs, preferred dividends, and fair value of warrants issued to convertible preferred stockholders	(36)	(55)	(24,320)	(11,985)	(24,746)	(12,295)	(12,210)
Net loss allocable to common stockholders	\$ (9,349) \$	(21,236) \$	(50,054) \$	(48,697) \$	(69,487) \$	(35,171) \$	(30,694)

Net loss per share allocable to  
common stockholders—basic &  
diluted \$ (50.81) \$ (111.90) \$ (261.38) \$ (252.87) \$ (351.76) \$ (178.17) \$ (152.78)

---

	Year Ended June 30,			Six Months Ended December 31,	Year Ended December 31,	Six Months Ended June 30,	
	2001	2002	2003	2003	2004	2004	2005 (unaudited)
Pro forma net loss per share allocable to common stockholders—basic & diluted (unaudited)				\$ (9.63)	\$ (1.32)		
Weighted average shares of common stock outstanding used in computing net loss per share allocable to common stockholders—basic & diluted	184	190	191	193	198	197	201
Weighted average shares of common stock outstanding used in computing pro forma net loss per share allocable to common stockholders—basic & diluted (unaudited)					13,536	13,547	

The following table sets forth our cash, cash equivalents and short-term investments and capitalization as of June 30, 2005:

- on an actual basis giving retroactive effect to the 1-for-1.3 reverse stock split;
- on a pro forma basis to reflect the automatic conversion of all of our outstanding convertible preferred stock and mandatorily redeemable convertible preferred stock into 13,338,356 shares of common stock on the closing of this offering; and
- on a pro forma as adjusted basis to reflect the net proceeds from the sale of [REDACTED] shares of common stock in this offering at an assumed initial public offering price of \$ [REDACTED] per share (the midpoint of the estimated price range shown on the cover of this prospectus), after deducting underwriting discounts and commissions and estimated offering expenses.

As of June 30, 2005		
	Actual (unaudited)	Pro Forma (unaudited)
(in thousands)		

#### **Balance Sheet Data:**

Cash and cash equivalents	\$ 3,259	\$ 3,259
Restricted cash	259	259
Short-term investments	11,446	11,446
Working capital	(3,372)	(3,372)
Total assets	30,052	30,052
Deferred revenue	16,414	16,414
Current portion of notes payable	2,162	2,162
Long-term portion of notes payable	3,946	3,946
Long-term convertible notes payable—principal amount plus accrued interest, less unamortized debt discount—related party	8,622	8,622
Mandatorily redeemable preferred stock	78,788	—
Total stockholders' (deficit)	(89,258)	(10,470)

## RISK FACTORS

An investment in our common stock involves a high degree of risk. You should consider carefully the following risk factors and the other information contained in this prospectus before you decide to purchase our common stock. Additional risks that are not currently known or foreseeable to us may materialize at a future date. The trading price of our common stock could decline if any of these risks or uncertainties occur and you might lose all or part of your investment.

### Risks Related To Our Business

**We have a history of operating losses and we expect to continue to incur losses and may never be profitable.**

As of June 30, 2005, we had an accumulated deficit of approximately \$191.0 million. We had net losses of \$18.5 million and \$44.7 million for the six months ended June 30, 2005, and the year ended December 31, 2004, respectively. We have had operating losses since inception as a result of our significant clinical development, research and development, general and administrative, sales and marketing and business development expenses. We expect to incur losses for at least the next several years as we expand our sales and marketing capabilities and continue our clinical trials and research and development activities.

Our prospects for achieving profitability will depend primarily on how successful we are in executing our business plan to:

- market and sell Zanaflex Capsules;
- obtain FDA approval for and commercialize Fampridine-SR;
- continue to develop our preclinical product candidates and advance them into clinical trials; and
- enter into strategic partnerships and collaboration arrangements related to our drug discovery programs and product candidates.

If we are not successful in executing our business plan, we may never achieve or may not sustain profitability.

**We will be substantially dependent on sales of one product, Zanaflex Capsules, to generate revenue for the foreseeable future.**

We currently derive substantially all of our revenue from the sale of Zanaflex Capsules and Zanaflex tablets, which are our only FDA-approved products. Although we currently distribute Zanaflex tablets, our marketing efforts are focused on Zanaflex Capsules and we do not, and do not intend to, actively promote Zanaflex tablets. As a result, prescriptions for Zanaflex tablets have declined and we expect that they will continue to decline. Our goal is to convert sales of Zanaflex tablets and generic tizanidine tablets to sales of Zanaflex Capsules. We believe that sales of Zanaflex Capsules will constitute a significant portion of our total revenue for the foreseeable future. If we are unable to convert tablet sales to capsule sales or are otherwise unable to increase our revenue from the sale of this product, our business, financial condition and results of operations could be adversely affected.

**If we are unable to successfully differentiate Zanaflex Capsules from both Zanaflex tablets and generic tizanidine tablets we may not be able to increase sales of Zanaflex Capsules.**

There are currently 11 generic versions of tizanidine tablets on the market and they are significantly cheaper than either Zanaflex Capsules or Zanaflex tablets. In 2004, these generic versions of tizanidine tablets constituted 95% of tizanidine sales in the United States. Although Zanaflex Capsules have a different pharmacokinetic profile when taken with food and are available in a higher dose than Zanaflex tablets and their generic equivalents, we may be unsuccessful in convincing

prescribers, patients and third-party payors that these differences justify the higher price of Zanaflex Capsules. Prescribers may prescribe generic tizanidine tablets instead of Zanaflex Capsules, and third-party payors may establish unfavorable reimbursement policies for Zanaflex Capsules or otherwise seek to encourage patients and prescribers to use generic tizanidine tablets instead of Zanaflex Capsules. In addition, although the FDA has determined that neither Zanaflex tablets nor generic tizanidine tablets are therapeutically equivalent, or "AB-rated," to Zanaflex Capsules, it is possible that pharmacists may improperly fill prescriptions with generic tizanidine tablets or may seek to influence patients or physicians to change prescriptions from Zanaflex Capsules to generic tizanidine tablets. If we are unable to successfully differentiate Zanaflex Capsules from Zanaflex tablets and generic tizanidine tablets in the minds of prescribers, pharmacists, patients and third-party payors, our ability to generate meaningful revenue from this product will be adversely affected.

***Our company has limited sales and marketing experience and we may not be successful in building an effective sales and marketing organization to market Zanaflex Capsules to specialty physicians.***

As a company, we have limited sales and marketing experience, having only launched Zanaflex Capsules in April 2005. In order to successfully commercialize Zanaflex Capsules or any other products that we may bring to market, we will need to have adequate sales, marketing and distribution capabilities. Our internal specialty sales force of 14 persons may need to be significantly expanded in the future. We may not be able to attract and train skilled sales and marketing personnel, in a timely manner or at all, or integrate and manage a growing sales and marketing organization.

***Returns of Zanaflex tablets may adversely affect our results of operations.***

Prior to the launch of generic tizanidine tablets in June 2002, wholesalers established larger than normal inventories of Zanaflex tablets. These inventories had expiration dates that extended to June 2005. Our return policy is to accept returns for six months before and 12 months after the product's expiration date. According to our Zanaflex asset purchase agreement with Elan, we are responsible for all returns of Zanaflex tablets after January 17, 2005. Zanaflex tablets sold by Elan can be returned to us through June 2006. In the year ended December 31, 2004, we took a \$4.1 million charge to establish a reserve for expected returns of Zanaflex tablets sold by Elan. This charge is an estimate. If returns for products not sold by us are higher than we have estimated, we will have to record additional charges, which will adversely affect our results of operations.

***Our product candidates must undergo rigorous clinical testing, the results of which are uncertain and could substantially delay or prevent us from bringing them to market.***

Before we can obtain regulatory approval for a product candidate, we must undertake extensive clinical testing in humans to demonstrate safety and efficacy to the satisfaction of the FDA and other regulatory agencies. Clinical trials of new product candidates sufficient to obtain regulatory marketing approval are expensive and take years to complete, and the outcome of such trials is uncertain.

Clinical development of any product candidate that we determine to take into clinical trials may be curtailed, redirected, delayed or eliminated at any time for some or all of the following reasons:

- negative or ambiguous results regarding the efficacy of the product candidate;
- undesirable side effects that delay or extend the trials, or other unforeseen or undesirable safety issues that make the product candidate not medically or commercially viable;
- inability to locate, recruit and qualify a sufficient number of patients for our trials;
- difficulty in determining meaningful end points or other measurements of success in our clinical trials;

- regulatory delays or other regulatory actions, including changes in regulatory requirements;
- difficulties in obtaining sufficient quantities of the product candidate manufactured under current good manufacturing practices;
- delays, suspension or termination of the trials imposed by the sponsor, an independent institutional review board for a clinical trial site, or clinical holds placed upon the trials by the FDA;
- FDA approval of new drugs that are more effective than our product candidates;
- change in the focus of our development efforts or a re-evaluation of our clinical development strategy; and
- a change in our financial position.

A delay in or termination of any of our clinical development programs could have an adverse effect on our business.

***If our Phase 3 clinical trials of Fampridine-SR are unsuccessful, or if we are unable to obtain regulatory approval for this product candidate or any approval is unduly limited in scope, our business prospects will be adversely affected.***

In June 2005, we initiated a Phase 3 clinical trial for Fampridine-SR for the improvement of walking ability in patients with MS. In April 2004, we released results from a Phase 2 clinical trial designed to assess the relative safety and efficacy of varying doses of Fampridine-SR in MS. Our results did not reach statistical significance for the primary endpoint in this trial. Although we have designed the current Phase 3 clinical trial to address the difficulties we encountered in interpreting the patient data from the earlier trial, we cannot be sure that the results from our current clinical trial will be statistically significant.

To achieve the primary endpoint in our current Phase 3 clinical trial for MS, we need to show statistical improvement in the walking speed of the patients in the trial and that this improvement is both sustained and clinically meaningful to these patients. If we fail to achieve the primary endpoint in this clinical trial or the results are ambiguous, we will have to determine whether to re-design our MS trial and protocols and continue with additional testing, or cease development activities in this area. Redesigning the program could be extremely costly and time-consuming. Even if we are able to achieve the primary endpoint, we will need positive results from at least one other clinical trial to support the filing of a new drug application, or NDA, with the FDA. We cannot predict how long the second trial, or any additional trial that might be required by the FDA, will take or what the cost will be.

Our Phase 3 clinical trial for Fampridine-SR in MS is being conducted pursuant to an SPA with the FDA and the FDA has agreed that, if successful, this trial could qualify as one of the pivotal trials needed to support regulatory approval. This agreement with the FDA is not, however, binding upon the FDA if unanticipated circumstances arise. If the FDA determines that a substantial scientific issue essential to determining the safety or efficacy of Fampridine-SR is identified after the trial began, the FDA may alter its conclusion on the adequacy of the protocol. In addition, even if the SPA remains in place and the trial meets its primary endpoint, the FDA could determine that the overall balance of risks and benefits for Fampridine-SR is not adequate to support approval, or only justifies approval for a narrow set of uses or approval with restricted distribution or other burdensome post-approval requirements and limitations. If the FDA denies approval of Fampridine-SR in MS, FDA approval is substantially delayed, approval is granted on a narrow basis or with restricted distribution or other burdensome post-approval requirements, or if the Fampridine-SR program is terminated, our business prospects will be adversely affected.

In March 2004, we completed two Phase 3 clinical trials of Fampridine-SR in SCI in which our results failed to reach their primary endpoints. We expect to resume development of Fampridine-SR for SCI after we have completed further development of the drug for MS. We cannot predict whether future clinical trials of Fampridine-SR in SCI will achieve their primary endpoints, how long these clinical trials will take or how much they will cost.

***Our other drug development programs are in early stages of development and may never be commercialized.***

All of our development programs other than Fampridine-SR are in the preclinical phase. Our future success depends, in part, on our ability to select promising product candidates, complete preclinical development of these product candidates and advance them to clinical trials. These product candidates will require significant development, preclinical studies and clinical trials, regulatory clearances and substantial additional investment before they can be commercialized.

Our preclinical programs may not lead to commercially viable products for several reasons. For example, we may fail to identify promising product candidates, our product candidates may fail to be safe and effective in preclinical tests or clinical trials, or we may have inadequate financial or other resources to pursue discovery and development efforts for new product candidates. In addition, because we have limited resources, we are focusing on product candidates that we believe are the most promising. As a result, we may delay or forego pursuit of opportunities with other product candidates. From time to time, we may establish and announce certain development goals for our product candidates and programs; however, given the complex nature of the drug discovery and development process, it is difficult to predict accurately if and when we will achieve these goals. If we are unsuccessful in advancing our preclinical programs into clinical testing or in obtaining regulatory approval, our long-term business prospects will be harmed.

***The pharmaceutical industry is subject to stringent regulation and failure to obtain regulatory approval will prevent commercialization of our product candidates.***

Our research, development, preclinical and clinical trial activities, as well as the manufacture and marketing of any products that we may successfully develop, are subject to an extensive regulatory approval process by the FDA and other regulatory agencies abroad. The process of obtaining required regulatory approvals for drugs is lengthy, expensive and uncertain, and any regulatory approvals may contain limitations on the indicated usage of a drug, distribution restrictions or may be conditioned on burdensome post-approval study or other requirements, including the requirement that we institute and follow a special risk management plan to monitor and manage potential safety issues, all of which may eliminate or reduce the drug's market potential. Post-market evaluation of a product could result in marketing restrictions or withdrawal from the market.

The results of preclinical and Phase 1 and Phase 2 clinical studies are not necessarily indicative of whether a product will demonstrate safety and efficacy in larger patient populations, as evaluated in Phase 3 clinical trials. Additional adverse events that could impact commercial success, or even continued regulatory approval, might emerge with more extensive post-approval patient use. Of the large number of drugs in development, only a small percentage result in the submission of an NDA to the FDA and even fewer are approved for commercialization.

In order to conduct clinical trials to obtain FDA approval to commercialize any product candidate, an IND application must first be submitted to the FDA and must become effective before clinical trials may begin. Subsequently, an NDA must be submitted to the FDA, including the results of adequate and well-controlled clinical trials demonstrating, among other things, that the product candidate is safe and effective for use in humans for each target indication. In addition, the manufacturing facilities used to produce the products must comply with current good manufacturing practices and must pass a pre-approval FDA inspection. Extensive submissions of preclinical and clinical trial data are required to

demonstrate the safety, efficacy, potency and purity for each intended use. The FDA may refuse to accept our regulatory submissions for filing if they are incomplete.

Clinical trials are subject to oversight by institutional review boards and the FDA to ensure compliance with the FDA's good clinical practice requirements, as well as other requirements for the protection of clinical trial participants. We depend, in part, on third-party laboratories and medical institutions to conduct preclinical studies and clinical trials for our products and other third-party organizations to perform data collection and analysis, all of which must maintain both good laboratory and good clinical practices required by regulators. If any such standards are not complied with in our clinical trials, the resulting data from the clinical trial may not be usable or we, an institutional review board or the FDA may suspend or terminate such trial, which would severely delay our development and possibly end the development of such product candidate. We also depend upon third party manufacturers of our products to qualify for FDA approval and to comply with good manufacturing practices required by regulators. We cannot be certain that our present or future manufacturers and suppliers will comply with current good manufacturing practices. The failure to comply with good manufacturing practices may result in the termination of clinical studies, restrictions in the sale of, or withdrawal of the products from the market. Compliance by third parties with these standards and practices is outside of our direct control.

In addition, we are subject to regulation under other state and federal laws, including requirements regarding occupational safety, laboratory practices, environmental protection and hazardous substance control, and may be subject to other local, state, federal and foreign regulations. We cannot predict the impact of such regulations on us, although it could impose significant restrictions on our business and additional expenses to comply with these regulations.

***Our products and product candidates may not gain market acceptance among physicians, patients and the medical community, thereby limiting our potential to generate revenue.***

Market acceptance of our products and product candidates will depend on the benefits of our products in terms of safety, efficacy, convenience, ease of administration and cost effectiveness and our ability to demonstrate these benefits to physicians and patients. We believe market acceptance also depends on the pricing of our products and the reimbursement policies of government and third-party payors, as well as on the effectiveness of our sales and marketing activities. Physicians may not prescribe our products, and patients may determine, for any reason, that our products are not useful to them. The failure of any of our products or product candidates, once approved, to achieve market acceptance would limit our ability to generate revenue and would adversely affect our results of operations.

***Our potential products may not be commercially viable if we fail to obtain an adequate level of reimbursement for these products by Medicaid, Medicare or other third-party payors.***

Our commercial success will depend in part on third-party payors, such as government health administrative authorities, including Medicaid and Medicare, private health insurers and other such organizations, agreeing to reimburse patients for the cost of our products. Significant uncertainty exists as to the reimbursement status of newly-approved healthcare products. Our business would be materially adversely affected if the Medicaid program, Medicare program or other third-party payors were to deny reimbursement for our products or provide reimbursement only on unfavorable terms. Our business could also be adversely affected if the Medicaid program, Medicare program or other reimbursing bodies or payors limit the indications for which our products will be reimbursed to a smaller set of indications than we believe is appropriate.

Third-party payors frequently require that drug companies negotiate agreements with them that provide discounts or rebates from list prices. At present we do not have any such agreements with

private third-party payors and only a small number of such agreements with government payors. If sales of Zanaflex Capsules increase we may need to offer larger discounts or discounts to a greater number of third-party payors to maintain acceptable reimbursement levels. If we were required to negotiate such agreements, there is no guarantee that we would be able to negotiate them at price levels that are profitable to us, or at all. If we are unsuccessful in maintaining reimbursement for our products at acceptable levels, our business will be adversely affected. In addition, if our competitors reduce the prices of their products, or otherwise demonstrate that they are more cost effective than our products, this may result in a greater level of reimbursement for their products relative to our products, which would reduce our sales and adversely affect our results of operations.

***We may experience pressure to lower prices on our approved products due to new and/or proposed federal legislation.***

Federal legislation enacted in December 2003 added an outpatient prescription drug benefit to Medicare, effective January 2006. In the interim, Congress has established a discount drug card program for Medicare beneficiaries. Both benefits will be provided primarily through private entities, which will attempt to negotiate price concessions from pharmaceutical manufacturers. These negotiations may increase pressure to lower prescription drug prices. While the new law specifically prohibits the U.S. government from interfering in price negotiations between manufacturers and Medicare drug plan sponsors, some members of Congress are pursuing legislation that would permit the U.S. government to use its enormous purchasing power to demand discounts from pharmaceutical companies, thereby creating de facto price controls on prescription drugs. In addition, the new law contains triggers for Congressional consideration of cost containment measures for Medicare in the event Medicare cost increases exceed a certain level. These cost containment measures could include limitations on prescription drug prices. This Medicare prescription drug coverage legislation, as well as additional healthcare legislation that may be enacted at a future date, could reduce our sales and adversely affect our results of operations.

***If our competitors develop and market products that are more effective, safer or more convenient than our approved products, or obtain marketing approval before we obtain approval of future products, our commercial opportunity will be reduced or eliminated.***

Competition in the pharmaceutical and biotechnology industries is intense and is expected to increase. Composition of matter patents on tizanidine, the active ingredient in Zanaflex Capsules and Zanaflex tablets, expired in 2002. There are currently 11 generic versions of tizanidine tablets on the market. To the extent that we are not able to differentiate Zanaflex Capsules from Zanaflex tablets and generic tizanidine tablets and/or pharmacists improperly substitute generic tizanidine tablets when filling prescriptions for Zanaflex Capsules, we may be unable to convert a meaningful amount of sales of Zanaflex tablets and generic tizanidine tablets to Zanaflex Capsules and our ability to generate revenue from this product will be adversely affected. Although no other FDA-approved capsule formulation of tizanidine exists, another company could develop a capsule or other formulation of tizanidine that competes with Zanaflex Capsules.

Many biotechnology and pharmaceutical companies, as well as academic laboratories, are involved in research and/or product development for various neurological diseases, including MS and SCI. We are aware of a company developing a sodium/potassium channel blocker and a second company developing an immediate release form of fampridine, both of which may compete with Fampridine-SR, if approved. In certain circumstances, pharmacists are not prohibited from formulating certain drug compounds to fill prescriptions on an individual patient basis. We are aware that at present compounded fampridine is used by some people with MS or SCI and it is possible that some people will want to continue to use compounded formulations even if Fampridine-SR is approved. Several companies are engaged in developing products that include novel immune system approaches and cell

transplant approaches to remyelination for the treatment of people with MS. These programs are in early stages of development and may compete in the future with Fampridine-SR or our preclinical candidates.

Our competitors may succeed in developing products that are more effective, safer or more convenient than our products or the ones we have under development or that render our approved or proposed products or technologies noncompetitive or obsolete. In addition, our competitors may achieve product commercialization before we do. If any of our competitors develops a product that is more effective, safer or more convenient for patients, or is able to obtain FDA approval for commercialization before we do, we may not be able to achieve market acceptance for our products, which would adversely affect our ability to generate revenues and recover the substantial development costs we have incurred and will continue to incur.

Our products may be subject to competition from lower-priced versions of such products and competing products imported into the United States from Canada, Mexico and other countries where there are government price controls or other market dynamics that make the products lower priced.

***Our operations could be curtailed if we are unable to obtain any necessary additional financing on favorable terms or at all.***

On June 30, 2005, on a pro forma as-adjusted basis after giving effect to this offering, we would have had approximately \$ million in cash, cash equivalents and short-term investments. Although we anticipate this will be sufficient to fund our operations for approximately the next 18 months, we have several product candidates in various stages of development, and all will require significant further investment to develop, test and obtain regulatory approval prior to commercialization. We will likely need to seek additional equity or debt financing or strategic collaborations to continue our product development activities, and could require substantial funding to commercialize any products that we successfully develop. We may also require additional financing to support and expand our commercialization of Zanaflex Capsules. We do not currently have any funding commitments or arrangements with third parties to provide funding. We may not be able to raise additional capital on favorable terms or at all.

To the extent that we are able to raise additional capital through the sale of equity securities, the issuance of those securities would result in dilution to our stockholders. Holders of such new equity securities may also have rights, preference or privileges that are senior to yours. If additional capital is raised through the incurrence of indebtedness, we may become subject to various restrictions and covenants that could limit our ability to respond to market conditions, provide for unanticipated capital investments or take advantage of business opportunities. To the extent funding is raised through collaborations or intellectual property-based financings, we may be required to give up some or all of the rights and related intellectual property to one or more of our products, product candidates or preclinical programs. If we are unable to obtain sufficient financing on favorable terms when and if needed, we may be required to reduce, defer or discontinue one or more of our product development programs or devote fewer resources to marketing Zanaflex Capsules.

***The loss of our key management and scientific personnel may hinder our ability to execute our business plan.***

Our success depends on the continuing contributions of our management team and scientific personnel, and maintaining relationships with our scientific and medical network and the network of centers in the United States and Canada that conducts our clinical trials. We are highly dependent on the services of Dr. Ron Cohen, our President and Chief Executive Officer, as well as the other principal members of our management and scientific staff. Our success depends in large part upon our ability to attract and retain highly qualified personnel. We face intense competition in our hiring efforts with other pharmaceutical and biotechnology companies, as well as universities and nonprofit research

organizations, and we may have to pay higher salaries to attract and retain qualified personnel. The loss of one or more of our key employees, or our inability to attract additional qualified personnel, could substantially impair our ability to implement our business plan.

***We face an inherent risk of liability in the event that the use or misuse of our products results in personal injury or death.***

If the use or misuse of Zanaflex Capsules or any other FDA-approved products we may sell in the future harms people, we may be subject to costly and damaging product liability claims brought against us by consumers, healthcare providers, pharmaceutical companies, third-party payors or others. The use of our product candidates in clinical trials could also expose us to product liability claims. We cannot predict all of the possible harms or side effects that may result from the use of our products or the testing of product candidates and, therefore, the amount of insurance coverage we currently have may not be adequate to cover all liabilities or defense costs we might incur. A product liability claim or series of claims brought against us could give rise to a substantial liability that could exceed our resources. Even if claims are not successful, the costs of defending such claims and potential adverse publicity could be harmful to our business.

***We are subject to various federal and state laws regulating the marketing of Zanaflex Capsules and, if we do not comply with these regulations, we could face substantial penalties.***

Our sales, promotion and other activities related to Zanaflex Capsules, or any of our other products under development following their regulatory approval, are subject to regulatory and law enforcement authorities in addition to the FDA, including the Federal Trade Commission, the Department of Justice, and state and local governments. We are subject to various federal and state laws pertaining to health care "fraud and abuse," including both federal and state anti-kickback laws. Anti-kickback laws make it illegal for a prescription drug manufacturer to solicit, offer, receive or pay any remuneration as an inducement for the referral of business, including the use, recommendation, purchase or prescription of a particular drug. The federal government has published regulations that identify "safe harbors" or exemptions for certain payment arrangements that do not violate the anti-kickback statutes. Although we seek to comply with these statutes, it is possible that our practices, or those of our contract sales force, might be challenged under anti-kickback or similar laws. Violations of fraud and abuse laws may be punishable by civil or criminal sanctions, including fines and civil monetary penalties, and future exclusion from participation in government healthcare programs.

***We may be subject to penalties if we fail to comply with post-approval legal and regulatory requirements and our products could be subject to restrictions or withdrawal from the market.***

Any product for which we currently have or may obtain marketing approval, along with the associated manufacturing processes, any post-approval clinical data that we might be required to collect and the advertising and promotional activities for the product, are subject to continual recordkeeping and reporting requirements, review and periodic inspections by the FDA and other regulatory bodies. Regulatory approval of a product may be subject to limitations on the indicated uses for which the product may be marketed or to other restrictive conditions of approval that limit our ability to promote, sell or distribute a product. Furthermore, any approval may contain requirements for costly post-marketing testing and surveillance to monitor the safety or efficacy of the product.

We have an outstanding commitment with the FDA inherited from Elan to evaluate Zanaflex Capsules for pediatric use by December 2005 in accordance with the requirements of the Pediatric Research Equity Act. We intend to discuss this matter with the FDA and seek a deferral or waiver of the requirement to conduct pediatric studies. Without a waiver, we will be required to conduct a pediatric study of Zanaflex Capsules and incur the related costs of this clinical trial.

Our advertising and promotion are subject to stringent FDA rules and oversight. In particular, the claims in our promotional materials and activities must be consistent with the FDA approvals for our products, and must be appropriately substantiated and fairly balanced with information on the safety risks and limitations of the products. Any free samples we distribute to physicians must be carefully monitored and controlled, and must otherwise comply with the requirements of the Prescription Drug Marketing Act, as amended, and FDA regulations. We must continually review adverse event information that we receive concerning our drugs and make expedited and periodic adverse event reports to the FDA and other regulatory authorities.

In addition, the research, manufacturing, distribution, sale and promotion of drug and biological products are potentially subject to regulation by various federal, state and local authorities in addition to the FDA, including the Centers for Medicare and Medicaid Services, other divisions of the U.S. Department of Health and Human Services, the U.S. Department of Justice and individual U.S. Attorney offices within the Department of Justice, and state and local governments. For example, sales, marketing and scientific/educational grant programs must comply with the anti-kickback and fraud and abuse provisions of the Social Security Act, as amended, the False Claims Act, as amended, the privacy provisions of the Health Insurance Portability and Accountability Act and similar state laws. Pricing and rebate programs must comply with the Medicaid rebate requirements of the Omnibus Budget Reconciliation Act of 1990, as amended, and the Veterans Health Care Act of 1992, as amended. If products are made available to authorized users of the Federal Supply Schedule of the General Services Administration, additional laws and requirements apply. All of these activities are also potentially subject to federal and state consumer protection and unfair competition laws.

We may be slow to adapt, or we may not be able to adapt, to changes in existing regulatory requirements or adoption of new legal or regulatory requirements or policies. Later discovery of previously unknown problems with our products, manufacturing processes, or failure to comply with regulatory requirements, may result in:

- voluntary or mandatory recalls;
- voluntary or mandatory patient or physician notification;
- withdrawal of product approvals;
- product seizures;
- restrictions on, or prohibitions against, marketing our products;
- restrictions on importation of our product candidates;
- fines and injunctions;
- civil and criminal penalties;
- exclusion from participation in government programs; and
- suspension of review or refusal to approve pending applications.

***State pharmaceutical marketing compliance and reporting requirements may expose us to regulatory and legal action by state governments or other government authorities.***

In recent years, several states, including California, Vermont, Maine, Minnesota, New Mexico and West Virginia, have enacted legislation requiring pharmaceutical companies to establish marketing compliance programs and file periodic reports with the state on sales, marketing, pricing and other activities. For example, California has enacted a statute requiring pharmaceutical companies to adopt a comprehensive compliance program that is in accordance with the Office of Inspector General of the Department of Health and Human Services *Compliance Program Guidance for Pharmaceutical*

*Manufacturers*. This compliance program must include policies for compliance with the Pharmaceutical Research and Manufacturers of America *Code on Interactions with Healthcare Professionals*, as well as a specific annual dollar limit on gifts or other items given to individual healthcare professionals in California. The law requires posting policies on a company's public web site along with an annual declaration of compliance.

Vermont, Maine, Minnesota, New Mexico, and West Virginia have also enacted statutes of varying scope that impose reporting and disclosure requirements upon pharmaceutical companies pertaining to drug pricing and payments and costs associated with pharmaceutical marketing, advertising and promotional activities, as well as restrictions upon the types of gifts that may be provided to healthcare practitioners. Similar legislation is being considered in other states. Many of these requirements are new and uncertain and the penalties for failure to comply with these requirements are unclear. We are not aware of any companies against which fines or penalties have been assessed under these state reporting and disclosure laws to date. We are currently in the process of developing a formal compliance infrastructure and standard operating procedures to comply with such laws. Unless we are in full compliance with these laws, we could face enforcement action and fines and other penalties, and could receive adverse publicity.

***If we seek to market our products in foreign jurisdictions, we will need to obtain regulatory approval in these jurisdictions.***

In order to market our products in the European Union and many other foreign jurisdictions, we must obtain separate regulatory approvals and comply with numerous and varying regulatory requirements. Approval procedures vary among countries and can involve additional clinical testing. The time required to obtain approval may differ from that required to obtain FDA approval. Should we decide to market our products abroad, we may fail to obtain foreign regulatory approvals on a timely basis, if at all. Approval by the FDA does not ensure approval by regulatory authorities in other countries, and approval by one foreign regulatory authority does not ensure approval by regulatory authorities in other foreign countries or by the FDA. We may not be able to file for, and may not receive, necessary regulatory approvals to commercialize our products in any foreign market, which could adversely affect our business prospects.

***If we use biological and hazardous materials in a manner that causes injury, we may be liable for damages.***

Our research and development activities involve the controlled use of potentially harmful biological materials, hazardous materials and chemicals that are subject to federal, state and local laws and regulations governing their use, storage, handling and disposal. We cannot completely eliminate the risk of accidental contamination or injury from the use, storage, handling or disposal of these materials. If we fail to comply with environmental regulations, we could be subject to criminal sanctions and/or substantial liability for any damages that result, and any substantial liability could exceed our resources. In addition, the cost of compliance with environmental and health and safety regulations may be substantial.

**Risks Related to Our Dependence on Third Parties**

***We currently have no manufacturing capabilities and are substantially dependent upon Elan, Novartis and other third party suppliers to manufacture Zanaflex Capsules, Zanaflex tablets and Fampridine-SR.***

We do not own or operate, and currently do not plan to own or operate, manufacturing facilities for production of Zanaflex Capsules, Zanaflex tablets or Fampridine-SR. We rely and expect to continue to rely on third parties for the production of our products and clinical trial materials.

We rely on a single manufacturer, Elan, for the supply of Zanaflex Capsules. Zanaflex Capsules are manufactured using Elan's proprietary SODAS (spheroidal oral drug absorption system) multiparticulate drug delivery technology. Elan is obligated, in the event of a failure to supply Zanaflex Capsules, to use commercially reasonable efforts to assist us in either producing Zanaflex Capsules ourselves or in transferring production of Zanaflex Capsules to a third-party manufacturer, provided that such third-party manufacturer is not a technological competitor of Elan. In the event production is transferred to a third party, the FDA may require us to demonstrate through bioequivalence studies and laboratory testing that the product made by the new supplier is equivalent to the current Zanaflex Capsules before we could distribute products from that supplier. The process of transferring the technology and qualifying the new supplier could take a year or more.

Under our supply agreement with Elan, we provide Elan with monthly written 18-month forecasts and with annual written two-year forecasts of our supply requirements for Zanaflex Capsules. In each of the five months following the submission of our written 18-month forecast we are obligated to purchase the quantity specified in the forecast, even if our actual requirements are greater or less. Elan is not obligated to supply us with quantities in excess of our forecasted amounts, although it has agreed to use commercially reasonable efforts to do so. Because we have a limited history of selling Zanaflex Capsules, our forecasts of our supply requirements may be inaccurate. As a result, we may have an excess or insufficient supply of Zanaflex Capsules.

The Elan facility located in Gainesville, Georgia, which is responsible for bottling Zanaflex Capsules, has been operating under a court-ordered consent decree and injunction since 2001, which were imposed following adverse FDA inspections and FDA allegations that the facility was failing to comply with current good manufacturing requirements. These prior issues were not related to the manufacture of our products. If, however, Elan fails to comply with the requirements of the consent decree and injunction, it could be held in contempt and the facility could be shut down and the manufacturing of our products halted or interrupted.

We currently rely on Novartis for our supply of Zanaflex tablets and tizanidine, the active pharmaceutical ingredient, or API, in both Zanaflex Capsules and Zanaflex tablets. Under a supply agreement we assumed from Elan, Novartis is responsible for manufacturing Zanaflex tablets and tizanidine for us through February 2007. This includes the tizanidine that Elan uses to manufacture Zanaflex Capsules for us. Novartis currently produces tizanidine, but has arranged with two other parties to formulate tablets and bottle and package the final product. Novartis has informed us that it intends to discontinue production of tizanidine by the end of 2005. It is our understanding that Novartis is currently in the process of qualifying an alternative tizanidine manufacturer. We have established relationships with the companies that currently formulate, bottle and package the tablets, however, we do not have a relationship with an alternative manufacturer of tizanidine. By the expiration of our contract with Novartis in 2007, we will need to have established a direct relationship with an alternative supplier of tizanidine.

We also rely exclusively on Elan to supply us with our requirements for Fampridine-SR. Elan relies on a third-party manufacturer to supply fampridine, the API in Fampridine-SR. Under our supply agreement with Elan, we are obligated to purchase at least 75% of our yearly supply of Fampridine-SR from Elan, and we are required to make compensatory payments if we do not purchase 100% of our requirements from Elan, subject to certain exceptions. We and Elan have agreed that we may purchase up to 25% of our annual requirements from Patheon, Inc., a mutually agreed-upon and qualified second manufacturing source, without having to make compensatory payments.

Our dependence on others to manufacture our marketed products and clinical trial materials may adversely affect our ability to develop and commercialize our products on a timely and competitive basis.

**If third-party contract research organizations do not perform in an acceptable and timely manner, our preclinical testing or clinical trials could be delayed or unsuccessful.**

We do not have the ability to conduct all aspects of our preclinical testing or clinical trials ourselves. We rely and will continue to rely on clinical investigators, third-party contract research organizations and consultants to perform some or all of the functions associated with preclinical testing or clinical trials. The failure of any of these vendors to perform in an acceptable and timely manner in the future, including in accordance with any applicable regulatory requirements, such as good clinical and laboratory practices, or preclinical testing or clinical trial protocols, could cause a delay or otherwise adversely affect on our preclinical testing or clinical trials and ultimately on the timely advancement of our development programs.

**We rely on a third party to provide the sales representatives to market Zanaflex Capsules to primary care physicians.**

We recently entered into a contract with Cardinal Health pursuant to which it provides us with approximately 160 sales representatives who market Zanaflex Capsules to primary care physicians. These sales representatives are not our employees and we do not have control over their performance or compliance with applicable laws. Their failure to increase prescriptions for Zanaflex Capsules from the targeted primary care physicians would negatively impact our sales growth, and their failure to comply with applicable laws could subject us to liability.

## **Risks Related to Our Intellectual Property**

**If we cannot protect our intellectual property, our ability to develop and commercialize our products will be severely limited.**

Our success will depend in part on our and our licensors' ability to obtain, maintain and enforce patent protection for the technologies, compounds and products, if any, resulting from our licenses and development programs. Without protection for the intellectual property we use, other companies could offer substantially identical products for sale without incurring the sizable discovery, development and licensing costs that we have incurred. Our ability to recover these expenditures and realize profits upon the sale of products could be diminished.

We have in-licensed or are the assignee of more than 25 U.S. patents, more than 60 foreign patents and over 65 patent applications pending in the United States or abroad for our own technologies and for technologies from our in-licensed programs. The process of obtaining patents can be time consuming and expensive with no certainty of success. Even if we spend the necessary time and money, a patent may not issue or it may not have sufficient scope or strength to protect the technology it was intended to protect or to provide us with any commercial advantage. We may never be certain that we were the first to develop the technology or that we were the first to file a patent application for the particular technology because U.S. patent applications are confidential until they are published, and publications in the scientific or patent literature lag behind actual discoveries. The degree of future protection for our proprietary rights will remain uncertain if our pending patent applications are not approved for any reason or if we are unable to develop additional proprietary technologies that are patentable. Furthermore, third parties may independently develop similar or alternative technologies, duplicate some or all of our technologies, design around our patented technologies or challenge our issued patents or the patents of our licensors.

We may initiate actions to protect our intellectual property and in any litigation in which our patents or our licensors' patents are asserted, a court may determine that the patents are invalid or unenforceable. Even if the validity or enforceability of these patents is upheld by a court, a court may not prevent alleged infringement on the grounds that such activity is not covered by the patent claims. In addition, effective intellectual property enforcement may be unavailable or limited in some foreign countries. Any litigation, whether to enforce our rights to use our or our licensors' patents or to defend

against allegations that we infringe third party rights, would be costly, time consuming, and may distract management from other important tasks.

As is commonplace in the biotechnology and pharmaceutical industry, we employ individuals who were previously employed at other biotechnology or pharmaceutical companies, including our competitors or potential competitors. To the extent our employees are involved in research areas that are similar to those areas in which they were involved at their former employers, we may be subject to claims that such employees and/or we have inadvertently or otherwise used or disclosed the alleged trade secrets or other proprietary information of the former employers. Litigation may be necessary to defend against such claims, which could result in substantial costs and be a distraction to management and which could have an adverse effect on us, even if we are successful in defending such claims.

We also rely in our business on trade secrets, know-how and other proprietary information. We seek to protect this information, in part, through the use of confidentiality agreements with employees, consultants, advisors and others. Nonetheless, those agreements may not provide adequate protection for our trade secrets, know-how or other proprietary information and prevent their unauthorized use or disclosure. To the extent that consultants, key employees or other third parties apply technological information independently developed by them or by others to our proposed products, disputes may arise as to the proprietary rights to such information which may not be resolved in our favor. The risk that other parties may breach confidentiality agreements or that our trade secrets become known or independently discovered by competitors, could adversely affect us by enabling our competitors, who may have greater experience and financial resources, to copy or use our trade secrets and other proprietary information in the advancement of their products, methods or technologies. Policing unauthorized use of our or our licensors' intellectual property is difficult, expensive and time-consuming, and we may be unable to determine the extent of any unauthorized use. Adequate remedies may not exist in the event of unauthorized use or disclosure.

***If third parties successfully claim that we infringed their patents or proprietary rights, our ability to continue to develop and successfully commercialize our product candidates could be delayed.***

Third parties may claim that we or our licensors or suppliers are infringing their patents or are misappropriating their proprietary information. In the event of a successful claim against us or our licensors or suppliers for infringement of the patents or proprietary rights of others relating to any of our marketed products or product candidates, we may be required to:

- pay substantial damages;
- stop using our technologies;
- stop certain research and development efforts;
- develop non-infringing products or methods, which may not be feasible; and
- obtain one or more licenses from third parties.

A license required under any such patents or proprietary rights may not be available to us, or may not be available on acceptable terms. If we or our licensors or suppliers are sued for infringement we could encounter substantial delays in, or be prohibited from developing, manufacturing and commercializing our product candidates and advancing our preclinical programs.

***We are dependent on our license agreements and if we fail to meet our obligations under these license agreements, or our agreements are terminated for any reason, we may lose our rights to our in-licensed patents and technologies.***

We are dependent on licenses for intellectual property related to Zanaflex, Fampridine-SR and all of our preclinical programs. Our failure to meet any of our obligations under these license agreements could result in the loss of our rights to this intellectual property. If we lose our rights under any of

these license agreements, we may be unable to commercialize a product that uses licensed intellectual property.

We could lose our rights to Fampridine-SR under our license agreement with Elan in countries in which we have a license, including the United States, if we fail to file regulatory approvals within a commercially reasonable time after completion and receipt of positive data from all preclinical and clinical studies required for the related NDA, or any NDA-equivalent. We could also lose our rights under our license agreement with Elan if we fail to launch a product in such countries, within 180 days of NDA or equivalent approval. Elan could also terminate our license agreement if we fail to make payments due under the license agreement. If we lose our rights to Fampridine-SR our prospects for generating revenue and recovering our substantial investment in the development of this product would be materially harmed.

## Risks Relating To The Offering

***There is no existing market for our common stock. An active trading market may not develop and you may not be able to resell your shares at or above the initial offering price.***

Prior to this offering, there has been no public market for our common stock. We cannot predict the extent to which trading will lead to the development of an active and liquid trading market in our common stock. The initial public offering price of our common stock was determined by negotiations between the representatives of the underwriters and us and may not be indicative of future market prices. The market price for our common stock may decline below the initial offering price. Our stock price could fluctuate significantly due to a number of factors, including:

- publicity regarding actual or potential clinical trial results relating to products under development by us or our competitors;
- conditions or trends in the pharmaceutical or biotechnology industries;
- litigation and other developments relating to our patents or other proprietary rights or those of our competitors;
- governmental regulation and legislation in the United States and foreign countries;
- changes in securities analysts' estimates of our performance or our failure to meet analysts' expectations;
- sales of substantial amounts of our stock;
- variations in product revenue and profitability; and
- variations in our anticipated or actual operating results.

Many of these factors are beyond our control. In addition, the stock markets in general, and the Nasdaq National Market and the market for biopharmaceutical companies in particular, have experienced extreme price and volume fluctuations recently. These fluctuations often have been unrelated or disproportionate to the operating performance of these companies. These broad market and industry factors may adversely affect the market price of our common stock, regardless of our actual operating performance.

***As a new investor, you will experience immediate and substantial dilution in the net tangible book value of your investment and may experience further dilution in the future.***

Investors purchasing shares of our common stock in this offering will pay more for their shares than the amount paid by existing stockholders who acquired shares prior to this offering. Accordingly, if you purchase common stock in this offering, you will incur immediate dilution in pro forma net tangible book value of approximately \$ [REDACTED] per share. If the holders of outstanding options or warrants exercise these options or warrants, you will incur further dilution.

***Future sales of our common stock could cause our stock price to decline.***

Sales of substantial amounts of our common stock in the public market after this offering, or the possibility of those sales or other distributions, could put downward pressure on the market price of our common stock. After the consummation of this offering, our current stockholders will be subject to a 180-day lock up on the sale of their shares. After the lock-up expires, at least \_\_\_\_\_ shares of our common stock will become freely tradable. \_\_\_\_\_ shares of common stock will be tradable subject to Rule 144, and holders of 13,338,356 shares of our common stock will have rights to cause us to file a registration statement on their behalf and to include their shares in registration statements that we may file on our behalf or on behalf of other stockholders. By exercising their registration rights and selling a large number of shares, these holders could cause the price of our common stock to decline.

***If our officers, directors and largest stockholders choose to act together, they may be able to control the outcome of a stockholder vote.***

After this offering, our officers, directors and holders of 5% or more of our outstanding common stock will beneficially own approximately \_\_\_\_\_ % of our common stock. Moreover, a majority of our directors are principals or representatives of entities that own substantial amounts of our common stock. As a result, these stockholders, acting together, will be able to significantly influence all matters requiring approval by our stockholders, including the election of directors and the approval or mergers or other business combination transactions. The interests of this group of stockholders may not always coincide with the interests of other stockholders, and they may act in a manner that advances their best interests and not necessarily those of other stockholders.

***Certain provisions of Delaware law, our certificate of incorporation and our by-laws may delay or prevent an acquisition of us that stockholders may consider favorable or may prevent efforts by our stockholders to change our directors or our management, which could decrease the value of your shares.***

Following this offering, our certificate of incorporation and by-laws will contain provisions that could make it more difficult for a third party to acquire us, and may have the effect of preventing or hindering any attempt by our stockholders to replace our current directors or officers. These provisions include:

- Our board of directors has the right to elect directors to fill a vacancy created by the expansion of the board of directors or the resignation, death or removal of a director, which prevents stockholders from being able to fill vacancies on our board of directors.
- Our board of directors may issue, without stockholder approval, shares of preferred stock with rights, preferences and privileges determined by the board of directors. The ability to authorize and issue preferred stock with voting or other rights or preferences makes it possible for our board of directors to issue preferred stock with super voting, special approval, dividend or other rights or preferences on a discriminatory basis that could impede the success of any attempt to acquire us.
- Our certificate of incorporation provides for the board of directors to be divided into three classes, each with staggered three-year terms. As a result, only one class of directors will be elected at each annual meeting of stockholders, and each of the two other classes of directors will continue to serve for the remainder of their respective three-year terms, limiting the ability of stockholders to reconstitute the board of directors.
- Our certificate of incorporation requires the vote of the holders of 75% of the outstanding shares of our common stock in order to take certain actions, including amendment of our bylaws, removal of directors for cause and certain amendments to our certificate of incorporation.

As a Delaware corporation, we are also subject to certain anti-takeover provisions of Delaware law. Under Delaware law, a corporation may not engage in a business combination with any holder of

15% or more of its capital stock unless the holders has held the stock for three years or, among other things, the board of directors has approved the transaction. Our board of directors could rely on Delaware law to prevent or delay an acquisition of us, which could have the effect of reducing your ability to receive a premium on your common stock.

***Because we do not intend to pay dividends, you will benefit from an investment in our common stock only if it appreciates in value.***

We have not paid cash dividends on any of our classes of capital stock to date, and we currently intend to retain our future earnings, if any, to fund the development and growth of our business. As a result, we do not expect to pay any cash dividends in the foreseeable future. The success of your investment in our common stock will depend entirely upon any future appreciation. There is no guarantee that our common stock will appreciate in value after the offering or even maintain the price at which you purchased your shares.

## **FORWARD-LOOKING STATEMENTS**

This prospectus, including the sections entitled "Summary," "Risk Factors," "Management's Discussion and Analysis of Financial Condition and Results of Operations," and "Business," contains forward-looking statements. These statements relate to future events or to our future financial performance, and involve known and unknown risks, uncertainties and other factors that may cause our actual results, levels of activity, performance, or achievements to be materially different from any future results, levels of activity, performance or achievements expressed or implied by these forward-looking statements. In some cases, you can identify forward-looking statements by the use of words such as "may," "could," "expect," "intend," "plan," "seek," "anticipate," "believe," "estimate," "predict," "potential," "continue," or the negative of these terms or other comparable terminology. You should not place undue reliance on forward-looking statements, since they involve known and unknown risks, uncertainties and other factors which are, in some cases, beyond our control and which could materially affect actual results, levels of activity, performance or achievements. Factors that may cause actual results to differ materially from current expectations, which we describe in more detail elsewhere in this prospectus under the heading "Risk Factors," include, but are not limited to:

- inability to successfully market and sell any approved product;
- unfavorable results of our preclinical or clinical testing;
- delays in obtaining, or failure to obtain FDA approvals;
- increased regulation by the FDA and other agencies;
- the introduction of competitive products;
- impairment of license, patent or other proprietary rights;
- failure to implement our strategy; and
- changes in our financial performance and cash requirements.

If one or more of these or other risks or uncertainties materialize, or if our underlying assumptions prove to be incorrect, actual results may vary significantly from what we projected. Any forward-looking statement you read in this prospectus reflects our current views with respect to future events and is subject to these and other risks, uncertainties and assumptions relating to our operations, results of operations, growth strategy and liquidity. We assume no obligation to publicly update or revise these forward-looking statements for any reason, or to update the reasons actual results could differ materially from those anticipated in these forward-looking statements, even if new information becomes available in the future.

The safe harbor for forward-looking statements contained in the Securities Litigation Reform Act of 1995 protects companies from liability for their forward looking statements if they comply with the requirements of the Act. The Act does not provide this protection for initial public offerings.

## **USE OF PROCEEDS**

We estimate that we will receive approximately \$ million in net proceeds from the sale of our common stock in this offering, or approximately \$ million if the underwriters exercise their over-allotment option in full, based on an assumed initial public offering price of \$ per share (the midpoint of the estimated price range shown on the cover of this prospectus) after deducting the estimated underwriting discounts and commissions and estimated offering expenses payable by us.

We intend to use the proceeds of this offering as follows:

- for sales and marketing activities, the payment of sales-based milestones to Elan for Zanaflex Capsules and market development for Fampridine-SR, if approved by the FDA;
- for research and development, including preclinical studies, clinical trials, and the preparation and filing of an NDA for Fampridine-SR; and
- the remainder for general corporate purposes, including to fund working capital, capital expenditures, and for the potential acquisition or licensing of pharmaceutical products or product candidates that are complementary to our own.

The amount and timing of our actual expenditures will depend on numerous factors, including the progress of our research and development activities, the progress of our clinical trials and regulatory approval process, the number and breadth of our product development programs, our success in marketing Zanaflex Capsules, and any in-licensing and acquisition activities. Accordingly, we will retain broad discretion in the allocation and use of the proceeds of this offering. Currently we have no specific plans or commitments related to any acquisitions or licenses.

Pending application of the net proceeds, we intend to invest them in short-term, investment-grade, interest-bearing instruments.

## **DIVIDEND POLICY**

We have never declared or paid any cash dividends on our common stock. We currently intend to retain our future earnings, if any, to finance the further development and expansion of our business and do not intend to pay cash dividends for the foreseeable future. Any future determination to pay dividends will be at the discretion of our board of directors and will depend on our financial condition, results of operations, capital requirements, restrictions contained in current or future financing instruments and other factors our board of directors deems relevant.

## CAPITALIZATION

The following table sets forth our cash, cash equivalents and short-term investments and capitalization as of June 30, 2005:

- on an actual basis giving retroactive effect to the 1-for-1.3 reverse stock split;
- on a pro forma basis to reflect the automatic conversion of all of our outstanding convertible preferred stock and mandatorily redeemable convertible preferred stock into 13,338,356 shares of common stock on the closing of this offering; and
- on a pro forma as adjusted basis to reflect the net proceeds from the sale of \_\_\_\_\_ shares of common stock in this offering at an assumed initial public offering price of \$ \_\_\_\_\_ per share (the midpoint of the estimated price range shown on the cover of this prospectus), after deducting underwriting discounts and commissions and estimated offering expenses.

	<b>As of June 30, 2005</b>		
	<b>Actual (unaudited)</b>	<b>Pro Forma (unaudited)</b>	<b>Pro Forma As Adjusted (unaudited)</b>
	(in thousands)		
Cash, cash equivalents and short-term investments	\$ 14,705	\$ 14,705	\$
Long-term portion of notes payable	3,946	3,946	—
Long-term convertible notes payable—principal amount plus accrued interest, less unamortized debt discount—Related party	8,622	8,622	—
Mandatorily Redeemable Convertible Preferred Stock, \$.001 par value: 7,472,612 shares of Series E convertible preferred stock authorized, issued and outstanding at June 30, 2005; 10,204,047 shares of Series I convertible preferred stock authorized, issued and outstanding at June 30, 2005; 112,790,246 shares of Series J convertible preferred stock authorized, 112,790,233 shares issued and outstanding at June 30, 2005; 1,533,330 shares of Series K convertible preferred stock authorized, 1,533,327 shares issued and outstanding at June 30, 2005; 0 shares issued and outstanding on a pro forma and pro forma as adjusted basis	78,788	—	—
<b>Stockholders' equity (deficit):</b>			
Non-redeemable Convertible Preferred Stock, \$.001 par value: 1,306,068 shares of Series A convertible preferred stock; 900,000 shares of Series B convertible preferred stock; 333,333 shares of Series C convertible preferred stock; 0 shares of Series D preferred stock; 2,300,000 shares of Series F convertible preferred stock; 0 shares of Series G preferred stock; 1,575,229 shares of Series H convertible preferred stock; 0 shares issued and outstanding on a pro forma and pro forma as adjusted basis	6	—	—
Common stock, \$.001 par value; 260,000,000 shares authorized at June 30, 2005 and 80,000,000 shares authorized on a pro forma and on a pro forma as adjusted basis; 208,766 shares issued and outstanding at June 30, 2005, issued and outstanding on a pro forma basis and on a pro forma as adjusted basis, respectively	13	—	—
Additional paid-in capital	101,743	180,524	—
Accumulated deficit	(190,996)	(190,996)	—
Other comprehensive loss	(11)	(11)	—
<b>Total stockholders' (deficit)</b>	<b>(89,258)</b>	<b>(10,470)</b>	—
<b>Total capitalization</b>	<b>\$ 2,098</b>	<b>\$ 2,098</b>	—



The table above excludes, as of June 30, 2005:

- 1,239,257 shares of common stock issuable upon the exercise of outstanding options and warrants to purchase our common stock, at a weighted average exercise price of \$3.71 per share;
- 749,176 restricted share grants entitling the share owners the right to acquire shares of common stock;
- 278,339 shares of common stock issuable upon the conversion of outstanding convertible promissory notes; and
- 535,522 shares of common stock reserved for issuance under our stock option plan.

## DILUTION

Our net tangible book deficit attributable to common stockholders as of June 30, 2005, was approximately \$      million, or approximately \$      per share based on 13,547,122 shares of common stock outstanding as of June 30, 2005, calculated after giving effect to the automatic conversion of all of our outstanding convertible preferred stock and mandatorily redeemable convertible preferred stock into 13,338,356 shares of common stock upon the closing of this offering. Net tangible book deficit per share represents our total tangible assets reduced by our total liabilities, mandatorily redeemable convertible preferred stock, deferred offering costs and the liquidation value of our convertible preferred stock and divided by the number of shares of common stock outstanding. Dilution per share to new investors represents the difference between the amount per share that you pay in this offering and the pro forma as adjusted net tangible book value per share immediately after this offering.

Our pro forma as adjusted net tangible book value as of June 30, 2005, would have been approximately \$      million, or approximately \$      per share, after giving effect to:

- the automatic conversion of our outstanding convertible preferred stock and mandatorily redeemable convertible preferred stock into 13,338,356 shares of common stock upon the closing of the offering;
- the sale by us of      shares in this offering, assuming an initial public offering price of \$      per share (the midpoint of the estimated price range shown on the cover of this prospectus), after deducting underwriting discounts and commissions and estimated offering expenses; and
- a 1-for-1.3 reverse stock split.

This represents an immediate increase in net tangible book value of \$      per share to existing stockholders and an immediate decrease in net tangible book value per share of \$      to you. The following table illustrates the dilution.

Assumed initial public offering price per share	\$
Net tangible book deficit per share as of June 30, 2005	\$
Pro forma increase in net tangible book value per share attributable to conversion of convertible preferred stock and mandatorily redeemable convertible preferred stock	
Increase in net tangible book value per share attributable to existing stockholders	—
Pro forma as adjusted net tangible book value per share after the offering	—
Dilution per share to new investors	\$

If the underwriters exercise their over-allotment option in full, the pro forma net tangible book value per share after the offering would be \$      per share, the increase in net tangible book value per share to existing stockholders would be \$      per share and the dilution to new investors would be \$      per share.

The following table sets forth, as of June 30, 2005, on a pro forma basis, the difference between existing stockholders and new investors with respect to the number of shares of common stock purchased from us, the total consideration paid to us, and the average price per share paid.

	Shares Purchased		Total Consideration		Average Price Per Share
	Number	%	Amount	%	
Existing stockholders		%	\$	%	\$
New investors(1)	—	—	—	—	—
Total	—	—	\$	—	—

(1) Before the underwriters' commissions and our expenses.



The table above assumes no exercise of stock options or warrants outstanding as of June 30, 2005. At June 30, 2005, there were 1,239,257 shares of common stock issuable upon exercise of outstanding stock options and warrants at a weighted average exercise price of \$3.71 per share. To the extent that outstanding options or warrants are exercised in the future, there will be further dilution to new investors. To the extent all of such outstanding options and warrants had been exercised as of June 30, 2005, net tangible book value per share after this offering would be \$ and total dilution per share to new investors would be \$ .

The issuance of additional common stock will result in further dilution to new investors.

If the underwriters' over-allotment option is exercised in full, the number of shares of our common stock held by existing stockholders will be reduced to of the aggregate number of shares of our common stock outstanding after this offering, and the number of shares of common stock held by new investors will be increased to or of the aggregate number of shares of common stock outstanding after this offering.

## **SELECTED CONSOLIDATED FINANCIAL DATA**

The selected consolidated statement of operations data for the fiscal years ended June 30, 2001, 2002 and 2003, six month period ended December 31, 2003, and the year ended December 31, 2004 and the selected consolidated balance sheet data presented below as of June 30, 2001, 2002 and 2003, and December 31, 2003 and 2004, set forth below are derived from, and are qualified by reference to, our consolidated financial statements other than the pro forma financial information, which have been audited by KPMG LLP, our Independent Registered Public Accounting Firm, and that are included elsewhere in this prospectus for the years ended June 30, 2002 and 2003, six months ended December 31, 2003 and year ended 2004.

We changed our fiscal year end from June 30 to December 31, effective for the six months ended December 31, 2003. The selected consolidated statement of operations data presented below for the six months ended June 30, 2004 and 2005, and selected consolidated balance sheet data presented below as of June 30, 2005, have been derived from our unaudited consolidated financial statements included elsewhere in this prospectus. The unaudited consolidated financial information include, in the opinion of management, all adjustments, consisting of normal and recurring adjustments, that management considers necessary for a fair presentation, in all material respects, of its consolidated results for those periods. Our historical results are not necessarily indicative of the results to be expected in the future periods and the results for the six-month period ended June 30, 2005, should not be considered indicative of results expected for the full year.

This data should be read in conjunction with our "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our Consolidated Financial Statements and the related notes included elsewhere in this prospectus.

	Year Ended June 30,			Six Months Ended December 31,	Year Ended December 31,	Six Months Ended June 30,	
	2001	2002	2003	2003	2004	2004	2005 (unaudited)
(in thousands, except per share data)							
<b>Statement of Operations Data:</b>							
Gross sales—Zanaflex	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ 478
Less: discounts and allowances	—	—	—	—	(4,417)	—	(844)
Net sales	—	—	—	—	(4,417)	—	(366)
Grant revenue	462	132	474	382	479	317	155
Total net revenue	462	132	474	382	(3,938)	317	(211)
Less: cost of sales	—	—	—	—	(771)	—	(1,401)
Gross profit	462	132	474	382	(4,709)	317	(1,612)
<b>Operating expenses:</b>							
Research and development	6,142	11,147	17,527	16,743	21,999	13,502	7,143
Research and development—related party	2,223	4,687	2,265	3,343	—	—	—
Sales and marketing	—	—	—	—	4,662	1,652	5,535
General and administrative	3,489	6,636	6,388	17,069	13,397	8,070	3,933
Total operating expenses	11,854	22,470	26,180	37,155	40,058	23,224	16,611
Operating loss	(11,392)	(22,338)	(25,706)	(36,773)	(44,767)	(22,907)	(18,223)
<b>Other income (expense):</b>							
Interest and amortization of debt discount expense	—	—	(78)	(38)	(385)	(208)	(520)
Interest and amortization of debt discount expense—related party	(443)	(408)	(369)	(184)	—	—	—
Interest income	1,824	984	393	276	409	237	258
Other income	—	—	26	7	2	2	1
Total other income (expense)	1,381	576	(28)	61	26	31	(261)
Minority interest—related party	699	580	—	—	—	—	—
Net loss	(9,313)	(21,181)	(25,734)	(36,712)	(44,741)	(22,876)	(18,484)
Beneficial conversion feature, accretion of issuance costs, preferred dividends, and fair value of warrants issued to convertible preferred stockholders	(36)	(55)	(24,320)	(11,985)	(24,746)	(12,295)	(12,210)
Net loss allocable to common stockholders	\$ (9,349) \$	\$ (21,236) \$	\$ (50,054) \$	\$ (48,697) \$	\$ (69,487) \$	\$ (35,171) \$	\$ (30,694)
Net loss per share allocable to common stockholders—basic & diluted	\$ (50.81) \$	\$ (111.90) \$	\$ (261.38) \$	\$ (252.87) \$	\$ (351.76) \$	\$ (178.17) \$	\$ (152.78)

	Year Ended June 30,			Six Months Ended December 31,	Year Ended December 31,	Six Months Ended June 30,	
	2001	2002	2003	2003	2004	2004	2005
						(unaudited)	

Pro forma net loss per share allocable to common stockholders—basic & diluted (unaudited)(1)	\$	(9.63)	\$	(1.32)
Weighted average shares of common stock outstanding used in computing net loss per share allocable to common stockholders—basic & diluted	184	190	191	193
Weighted average shares of common stock outstanding used in computing pro forma net loss per share allocable to common stockholders—basic & diluted (unaudited)(1)(2)				13,536
				13,547

- (1) The pro forma net loss per share and weighted average shares of common stock used in computing pro forma net loss per share allocable to common stockholders for the year ended December 31, 2004 and the six months ended June 30, 2005 are calculated as if all our convertible preferred stock and mandatorily redeemable convertible preferred stock were converted into common stock as of the beginning of the year ended December 31, 2004 or from their respective dates of issuance, if issued after the beginning of the year ended December 31, 2004. The pro forma net loss per share allocable to common stockholders for the year ended December 31, 2004 has been computed assuming the offering was completed at the beginning of the fiscal year presented and has been adjusted to give effect to the following: (a) recognition of the unamortized portion of a beneficial conversion charge of \$67.9 million; (b) recognition of the unamortized portion of issuance costs relating to Series E, Series I, Series J and Series K preferred stock of \$379,000; and (c) reversal of accrued preferred dividends on Series J and Series K preferred stock of \$7.4 million (see Note 8 to the consolidated financial statements). The pro forma net loss per share allocable to common stockholders for the six month period ended June 30, 2005 reflects the reversal of the accrued preferred dividend of \$2.7 million, amortized beneficial conversion charge of \$9.7 million and amortized issuance cost of \$411,000 assuming that the automatic conversion occurred as of the beginning of the fiscal year ended December 31, 2004.
- (2) The weighted average shares of our common stock outstanding used in computing the pro forma net loss per share allocable to common stockholders is calculated based on (a) Series A through Series J equivalent shares of common stock from the beginning of the fiscal year; and (b) Series K equivalent shares of common stock issuable from the date of issuance of the Series K preferred stock.

	As of June 30,			As of December 31,		As of June 30,	As of June 30,
	2001	2002	2003	2003	2004	2005	2005
	(in thousands)						(unaudited)

Consolidated Balance Sheet Data:							
Cash and cash equivalents	\$ 48,083	\$ 27,012	\$ 48,319	\$ 8,965	\$ 11,729	\$ 3,259	\$ 3,259
Restricted cash	243	250	253	254	257	259	259
Short-term investments	—	2,836	12,250	32,250	9,397	11,446	11,446
Working capital	46,115	27,097	58,975	35,375	9,067	(3,372)	(3,372)
Total assets	50,349	33,597	64,807	45,960	30,982	30,052	30,052
Deferred grant revenue	—	—	95	48	—	—	—
Deferred product revenue—capsules	—	—	—	—	—	5,386	5,386
Deferred product revenue—tablets	—	—	—	—	6,668	11,027	11,027
Current portion of notes payable	—	—	310	324	302	2,162	2,162
Non-current portion of notes payable	—	—	612	447	145	3,946	3,946
Long-term convertible notes payable—related party	7,131	7,538	7,907	8,091	8,422	8,622	8,622

Mandatorily redeemable preferred stock	59,604	59,659	18,187	30,171	66,364	78,788	—
Total stockholders' equity (deficit)	(19,041)	(36,910)	35,328	(130)	(60,571)	(89,258)	(10,470)

## **MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS**

The following discussion and analysis of our consolidated financial condition and results of operations should be read in conjunction with our audited consolidated financial statements and related notes included in this prospectus. This discussion and analysis contains forward-looking statements that are subject to risks, uncertainties and other factors, including, but not limited to, those discussed under "Risk Factors" and elsewhere in this prospectus, that could cause our actual results, performance, prospects or opportunities to differ materially from those expressed in, or implied by, these forward-looking statements. See "Forward-Looking Statements."

### **Background**

Since we commenced operations in 1995, we have devoted substantially all of our resources to the identification, development and commercialization of novel therapies that improve neurological function in people with MS, SCI and other disorders of the CNS. Our marketed drug, Zanaflex Capsules, is FDA-approved for the management of spasticity. Our lead product candidate, Fampridine-SR, is in a Phase 3 clinical trial for the improvement of walking ability in people with MS. Our preclinical programs also target MS and SCI, as well as other CNS disorders, including stroke and traumatic brain injury.

From 1995 until mid-2004, we were engaged almost exclusively in the in-licensing of compounds and the preclinical and clinical development of these compounds. We licensed the rights to Fampridine-SR from Elan for the treatment of SCI in 1997. In 1998, we formed a joint venture, MS Research & Development Corporation, or MSRD, with Elan International Services, Ltd., or EIS, a subsidiary of Elan, to develop Fampridine-SR for the treatment of MS under an exclusive worldwide license from Elan.

In September 2003, we entered into a termination and assignment agreement with Elan, EIS and MSRD, pursuant to which MSRD assigned to us its assets, including the license from Elan for Fampridine-SR for MS. We paid MSRD approximately \$11.5 million for all of the assets and assumed all of the liabilities of MSRD, and MSRD distributed to us approximately \$9.5 million as our pro rata portion of the purchase price. From the time of establishment of MSRD until the sale of MSRD's assets to us, Elan was considered to be a related party under generally accepted accounting principles. In conjunction with the termination and assignment, we entered into an amended license agreement with Elan that granted us exclusive worldwide rights to Fampridine-SR in return for the payment of royalties and milestones. In addition, we entered into a supply agreement under which Elan provides Fampridine-SR based upon an agreed upon price schedule.

In September 2003, we entered into a collaboration agreement with Teva Pharmaceutical Industries Ltd., or Teva, to jointly develop and promote in the United States products containing valrocemide, pursuant to which we made an initial payment to Teva of \$2.1 million. We and Teva amicably terminated this collaboration agreement in June 2005 and in connection with the termination we paid Teva approximately \$3.1 million. We and Teva have no further obligations to each other under this collaboration agreement.

We have expended a significant portion of our funds on a number of clinical trials for Fampridine-SR, our most advanced product candidate, including two Phase 3 clinical trials of Fampridine-SR in SCI and a Phase 2 clinical trial in MS, the results of which were announced in March 2004. An earlier Phase 2 clinical trial in MS was completed in 2001. In mid-2004, we decided to put our clinical trials of Fampridine-SR in SCI on hold, and refocused our efforts on our ongoing Fampridine-SR in MS program, leading to our current Phase 3 clinical trial of Fampridine-SR for

improvement of walking ability in people with MS. We may resume our clinical development of Fampridine-SR for SCI following completion of our MS clinical program, or sooner.

In July 2004, we acquired all of Elan's research, development, distribution, sales and marketing rights to Zanaflex Capsules and Zanaflex tablets in the United States. These products are FDA-approved for the management of spasticity. We made an upfront payment to Elan of \$2.0 million and are obligated to pay royalties on sales and to make milestone payments upon achievement of specified sales levels. To date, we have achieved one milestone, triggering a payment of \$1.5 million, 50% of which was paid in the first quarter of 2005 and 50% of which is due in the first quarter of 2006. As part of our Zanaflex acquisition, we entered into a long-term supply agreement with Elan under which Elan provides us with Zanaflex Capsules. Elan also assigned us its rights under an agreement with Novartis for the supply of tizanidine and Zanaflex tablets.

Our marketing efforts are focused on Zanaflex Capsules, which we launched in April 2005. Zanaflex tablets lost compound patent protection in 2002 and compete with 11 generic tizanidine products. Although we currently distribute Zanaflex tablets, we do not, and do not intend to, actively promote Zanaflex tablets. As a result, prescriptions for Zanaflex tablets have declined and we expect that they will continue to decline. Our goal is to convert as many sales of Zanaflex tablets and generic tizanidine tablets to sales of Zanaflex Capsules as possible. We believe that sales of Zanaflex Capsules will constitute a significant portion of our total revenue for the foreseeable future.

In late 2004, we began establishing our own specialty sales force in the United States, which consisted of 14 sales professionals as of June 30, 2005. This sales force targets neurologists and other prescribers who specialize in treating people with conditions that involve spasticity. Members of this sales force also call on managed care organizations, pharmacists and distribution customers. We have also recently entered into an agreement with Cardinal Health, under which they are providing approximately 160 sales representatives since August 2005 to market Zanaflex Capsules to primary care physicians in the United States. We have retained Access Worldwide Communications to provide a small, dedicated sales force of pharmaceutical telesales professionals to contact primary care, specialty physicians and pharmacists. We expect to expand this sales and marketing infrastructure in the future, as appropriate.

In February 2004, we changed our fiscal year end from June 30 to December 31, effective for the six months ended December 31, 2003.

#### ***Product Revenue and Returns***

Product revenue consists of sales of Zanaflex Capsules and Zanaflex tablets. We account for sales of these products using a consignment model. Under our consignment model, we do not recognize revenue upon shipment of product to our wholesale drug distributors. Instead, we invoice the wholesaler, record deferred revenue at gross invoice sales price, and classify the inventory held by the wholesaler as "consigned inventory" at our cost of goods for such inventory. We recognize revenue on consigned inventory when prescriptions are filled for the end-user, on a first-in first-out (FIFO) basis. Returns of products sold by us are charged directly against deferred revenue, reducing the amount of deferred revenue that we may recognize.

When we acquired Zanaflex from Elan, we also acquired Elan's inventory of Zanaflex tablets. We have deferred recognition of any revenue from sales of this inventory until the return period for the product expires in June 2006, and will recognize revenue then only to the extent that deferred revenues exceed returns. The Zanaflex tablet inventory we acquired from Elan was labeled with a code identifying the inventory as Elan's. Inventory manufactured after our acquisition of Zanaflex is labeled with a code that enables us to identify the inventory as ours. These codes are contained on end-user prescription data that we use to recognize revenue, enabling us to identify whether the prescription was

filled with product originally manufactured for Elan or with product manufactured for us. We cannot use prescription data to recognize revenue associated with inventory acquired from Elan because all of this inventory bears Elan's code and we cannot determine whether the prescription was filled with product that Elan sold prior to our acquisition of Zanaflex or with product we sold. In addition, we are uncertain about the amount of returns that we may receive on these products, for a number of reasons including that we have very little historical returns experience.

We accept returns of products for six months prior to and 12 months after their expiration date. As part of the acquisition of Zanaflex, we agreed to accept any returns of Zanaflex tablets that were returned subsequent to January 17, 2005, including returns of product that was originally sold by Elan. Product returns prior to January 17, 2005, were the responsibility of Elan. We have recorded a charge of \$4.1 million in the year ended December 31, 2004, for the estimated returns of Zanaflex tablets sold by Elan.

We began receiving end-user prescription data containing our code, which enabled us to begin recognizing revenue from Zanaflex tablet sales in March 2005. We began marketing Zanaflex Capsules in April 2005 and began recognizing revenue in the same month.

#### ***Discounts and Allowances***

Discounts and allowances consist of estimated reserves for cash discounts, rebates and chargebacks. At the time product is shipped to wholesalers an allowance is recorded for these discounts and allowances. Allowances are established on a product-by-product basis. These allowances are established by management as its best estimate at the time of sale based on each product's historical experience adjusted to reflect known changes in the factors that impact such reserves. Reserves for chargebacks, rebates and discounts are established based on the contractual terms with customers, analysis of historical levels of discounts, chargebacks and rebates, communications with customers and purchased information about the rate of prescriptions being written and the levels of inventory remaining in the distribution channel as well as expectations about the market for each product and anticipated introduction of competitive products. In the year ended December 31, 2004, we took a \$4.1 million charge to establish a reserve for expected returns of Zanaflex tablets sold by Elan.

#### ***Grant Revenue***

Grant revenue is recognized when the related research expenses are incurred and our performance obligations under the terms of the respective contract are satisfied. To the extent expended, grant revenue related to purchase of equipment is deferred and amortized over the shorter of its useful life or the life of the related contract.

#### ***Cost of Sales***

Cost of sales consists of cost of inventory, royalty expense, packaging costs, freight and required inventory stability testing costs. Our inventory costs and royalty obligations are set forth in the agreements entered into in connection with our Zanaflex acquisition.

#### ***Research and Development Expenses***

Research and development expenses consist primarily of salaries and related expenses for personnel, fees paid to professional service providers in conjunction with independently monitoring our clinical trials and acquiring and evaluating data from our clinical trials, costs of contract manufacturing services, costs of materials used in clinical trials and research and development, depreciation of capital resources used to develop our products, costs of facilities and the legal costs of pursuing patent

protection of our intellectual property. We expense research and development costs as incurred. We expect our research and development expenses to increase as we continue to develop our product candidates and preclinical programs.

The following table summarizes our research and development expenses for the fiscal years ended June 30, 2001, 2002, 2003, the six months ended December 31, 2003, the year ended December 31, 2004 and the six months ended June 30, 2005. Included in this table are our external research and development costs, consisting largely of clinical trial and research services provided by outside laboratories and vendors recognized in connection with each product candidate currently in clinical development and all preclinical programs as a group. Many of our internal research and development costs, including personnel costs, related benefits and stock-based compensation, are not attributable to any individual project because we use these resources across several development projects. Compensation expense for option grants is classified between clinical development and preclinical research and development based on employee job function.

	Year Ended June 30,			Six Months Ended December 31, 2003	Year Ended December 31, 2004	Six Months Ended June 30,	
	2001	2002	2003			2004	2005
	(unaudited)						
(in thousands)							
<b>Clinical development:</b>							
Contract expense—SCI	\$ 1,557	\$ 3,359	\$ 5,777	\$ 4,266	\$ 5,853	\$ 4,728	\$ 26
Contract expense—MS	649	908	1,613	2,116	2,850	1,319	1,042
Other contract expense	—	—	1,015	1,388	4,945	2,996	3,593
Operating expense	695	1,518	2,356	1,789	2,652	1,493	730
Licensing expense—Teva	—	—	—	2,000	—	—	—
<b>Total clinical development</b>	<b>2,901</b>	<b>5,785</b>	<b>10,761</b>	<b>11,559</b>	<b>16,300</b>	<b>10,536</b>	<b>5,391</b>
<b>Preclinical research &amp; development:</b>							
Research contracts	586	617	271	412	628	231	99
Contract expense	—	213	1,441	216	113	85	53
Operating expense	2,655	4,531	5,054	4,556	4,958	2,650	1,600
Total preclinical research & development	3,241	5,361	6,766	5,184	5,699	2,966	1,752
<b>Total research &amp; development</b>	<b>6,142</b>	<b>11,146</b>	<b>17,527</b>	<b>16,743</b>	<b>21,999</b>	<b>13,502</b>	<b>7,143</b>
<b>Research &amp; development—related party expense</b>	<b>2,223</b>	<b>4,687</b>	<b>2,265</b>	<b>3,343</b>	<b>—</b>	<b>—</b>	<b>—</b>
<b>Total</b>	<b>\$ 8,365</b>	<b>\$ 15,833</b>	<b>\$ 19,792</b>	<b>\$ 20,086</b>	<b>\$ 21,999</b>	<b>\$ 13,502</b>	<b>\$ 7,143</b>

#### **Research and Development—Related Party**

In cooperation with Elan, we have conducted a series of clinical trials during the past eight years evaluating Fampridine-SR. Elan was considered to be a related party during the period from April, 1998 when MSRD, our jointly-owned venture with Elan to develop Fampridine-SR in MS, was formed until September 2003, when Elan's interest in MSRD was sold to us (see Note 11 to our consolidated financial statements included in this prospectus). Related party research and development or sales and marketing expenses have been included as a separate line item in our financial statements for this period and in the table above. These expenses consisted of the contracted development and supply of

our lead product candidate, Fampridine-SR, license fees and expenses associated with our acquisition of Elan's interest in MSRD.

#### **Sales and Marketing Expenses**

Sales and marketing expenses includes the costs of salaries for our sales and marketing personnel and the cost of our advertising, promotion and education programs. Sales and marketing expenses include the cost of our contract sales force provided by Cardinal Health and our contract pharmaceutical telesales services provided by Access Worldwide.

#### **General and Administrative Expenses**

General and administrative expenses consist primarily of salaries and other related costs for personnel serving executive, finance, business development, legal, information technology and human resource functions. Other costs include facility costs not otherwise included in research and development or sales and marketing expense and professional fees for legal and accounting services. We expect that our general and administrative expenses will increase as we add personnel and become subject to the reporting obligations applicable to public companies.

#### **Stock-Based Compensation**

We have accounted for options and restricted stock granted to employees and directors in accordance with SFAS No. 123, *Accounting for Stock-Based Compensation*, and related interpretations. As such, compensation expense is recorded on stock option and restricted stock grants based on the fair value of the restricted stock and options granted, which is estimated on the date of grant using an option-pricing model and it is recognized on a straight-line basis over the vesting period. Compensation expense for options and restricted stock granted to employees amounted to \$643,000, \$1.3 million, \$1.6 million, \$13.2 million, \$9.0 million, and \$2.0 million for the years ended June 30, 2001, 2002 and 2003, the six months ended December 31, 2003, the year ended December 31, 2004 and the six months ended June 30, 2005. Compensation expense for options and restricted stock granted to employees are classified between research and development and general and administrative expense based on employee job function.

We have accounted for stock options granted to non-employees on a fair-value basis in accordance with SFAS No. 123, *Accounting for Stock-Based Compensation*, Emerging Issues Task Force ("EITF") Issue No. 96-18, *Accounting for Equity Instruments That Are Issued to Other Than Employees for Acquiring, or in Conjunction with Selling, Goods or Services*, and FASB Interpretations No. 28, *Accounting for Stock Appreciation Rights and Other Variable Stock Option or Award Plans an Interpretation of APB Opinion No. 15 and 25*. As a result, the non-cash charge to operations for non-employee options with vesting or other performance criteria is affected each reporting period by changes in the fair value of our common stock. Compensation expense for options granted to non-employees amounted to \$94,000, \$75,000, (\$7,000), \$8,000, \$15,000 and \$172 for the years ended June 30, 2001, 2002 and 2003, the six months ended December 31, 2003, the year ended December 31, 2004 and the six months ended June 30, 2005, respectively. The amount of compensation expense to be recorded in the future for options granted to non-employees is subject to change each reporting period based upon changes in the fair value of our common stock, estimated volatility and risk free interest rate until the non-employee completes performance under the option agreement.

We may record additional deferred stock-based compensation if we grant additional options or change the terms of the options granted to our employees. On August 3, 2005, we made additional stock option grants. As a result, we will record additional stock-based compensation in the third quarter of 2005 (see Note 16 of our consolidated financial statements, included in this prospectus).

### **Beneficial Conversion Feature**

In May 2003, we completed a private placement of 112,790,233 shares of Series J convertible preferred stock for an aggregate purchase price of approximately \$55.3 million. As a result of this financing, our Series A through Series I preferred stockholders' original conversion prices were reduced due to anti-dilution adjustments, which resulted in a beneficial conversion of \$80.7 million in accordance with EITF No. 98-5, *Accounting for Convertible Securities with Beneficial Conversion Features or Contingently Adjustable Conversion Ratios* and EITF No. 00-27, *Application of Issue No. 98-5 to Certain Convertible Instruments*. The beneficial conversion of \$20.9 million was recorded as an immediate charge to additional paid-in capital, relating to our Series A, Series B, Series C, Series F and Series H convertible preferred stock, which are not mandatorily redeemable and may be converted to common stock at any time at the option of the holders. The remaining beneficial conversion of \$59.9 million, relating to our Series E and Series I convertible preferred stock, which are mandatorily redeemable at any time on or after June 30, 2008, is being accreted ratably over the mandatory redemption period. Such accretion amounted to \$1.7 million, \$5.8 million, \$11.6 million and \$5.8 million for the year ended June 30, 2003, the six months ended December 31, 2003, the year ended December 31, 2004, and the six months ended June 30, 2005, respectively, and is charged to additional paid-in capital.

The issuance of Series J mandatorily redeemable convertible preferred stock resulted in a beneficial conversion amounting to \$40.0 million in accordance with EITF No. 98-5. The beneficial conversion is calculated based on the estimated fair value of our common stock price per share at the date of issuance of Series J preferred stock of approximately \$10.14 per share of common stock, which was calculated based on the estimated projected midpoint of the range of our initial public offering price per common share, which was planned in the fourth calendar quarter of 2003, and the stock price appreciation in comparable public companies from May 2003 to August 2003. The beneficial conversion feature is being accreted ratably over the mandatory redemption period, with a charge to additional paid-in capital of \$1.1 million, \$3.9 million, \$7.8 million and \$3.9 million for the year ended June 30, 2003, the six months ended December 31, 2003, the year ended December 31, 2004, and the six months ended June 30, 2005, respectively.

The unamortized portion of the beneficial conversion at June 30, 2005 was \$58.2 million. Upon the closing of this offering, we will recognize a one time non-cash charge to additional paid in capital, reflecting the unamortized portion of the beneficial conversion feature as a result of the automatic conversion of all outstanding convertible preferred stock and mandatorily redeemable convertible preferred stock to common stock upon completion of this offering.

### **Other Income (Expense)**

Interest income consists of interest earned on our cash, cash equivalents and short-term investments. Interest expense consists of interest expense on our GE Capital notes. Interest expense-related party consists of amortization of debt discount and accrued interest on our \$7.5 million aggregate principal amount of EIS convertible notes, outstanding as of June 30, 2005. Other income consists primarily of unrealized gains from our investment securities.

### **Results of Operations**

#### **Six Months Ended June 30, 2005 Compared to Six Months Ended June 30, 2004**

##### *Product Sales*

We recognized revenue from the sale of Zanaflex Capsules and Zanaflex tablets of \$478,000 for the six months ended June 30, 2005, as compared to \$0 for the six months ended June 30, 2004. We

recognize product sales using a consignment model meaning that product sales are recorded as deferred revenue when shipped to the wholesaler and only recognized as revenue when end-user prescriptions of the product are filled. Product sales in the six months ended June 30, 2005, consist of Zanaflex tablet sales beginning in March 2005, which is when we began receiving prescription data for tablets containing a code clearly identifying these prescriptions as having been filled with product we sold, and Zanaflex Capsules prescription data beginning after our launch of the product in April 2005.

Deferred revenue from Zanaflex Capsules was \$5.4 million as of June 30, 2005, as compared to \$0 as of June 30, 2004. The increase in deferred revenue of Zanaflex Capsules was a result of our launch of the product in April 2005. We expect deferred revenue from Zanaflex Capsules to increase in the future as our sales and marketing efforts ramp up, and prescription data continues to lag wholesaler orders made in anticipation of demand.

Deferred revenue from Zanaflex tablets was \$11.0 million as of June 30, 2005, an increase of \$4.3 million since December 31, 2004, as compared to \$0 as of June 30, 2004. The increase in deferred revenue of Zanaflex tablets was a result of continued sales of the product and the fact that we are not recognizing any of the deferred revenue from Zanaflex tablet inventory acquired from Elan until after the return period expires in June 2006. With respect to the \$11.0 million of deferred revenue at June 30, 2005, approximately \$3.0 million related to product that we acquired from Elan that had an expiration date of less than 12 months at the time we sold it during 2004. We believe there is a high likelihood that this product will be returned, which would result in our inability to recognize revenue related to these sales. We expect deferred revenue from Zanaflex tablets to decline over time as we attempt to convert Zanaflex tablet sales to Zanaflex Capsules sales.

#### *Discounts and Allowances*

We recorded discounts and allowances of \$844,000 for the six months ended June 30, 2005 as compared to \$0 for the six months ended June 30, 2004. Discounts and allowances are recorded when Zanaflex Capsules and Zanaflex tablets are shipped to wholesalers. We only began shipping Zanaflex tablets after our acquisition from Elan in July 2004 and Zanaflex Capsules in April 2005. Discounts and allowances for the six months ended June 30, 2005 consisted of \$597,000 in cash discounts and \$247,000 in reserves for chargebacks and rebates. As part of our April 2005 launch of Zanaflex Capsules, in April, May and June 2005 we extended a 6% promotional cash discount over and above the standard 2% discount provided to drug wholesalers and a 4% rebate on products resold by the wholesalers to pharmacies, hospitals and other third parties. We expect cash discounts to decrease in future periods.

#### *Grant Revenue*

Grant revenue for the six months ended June 30, 2005 was \$155,000 compared to \$317,000 for the six months ended June 30, 2004. Grant revenue is recognized when the related research expenses are incurred and our performance obligations under the terms of the respective contract are satisfied.

#### *Cost of Sales*

We recorded cost of sales of \$1.4 million for the six months ended June 30, 2005 as compared to \$0 for the six months ended June 30, 2004. Cost of sales for the six months ended June 30, 2005, consisted of \$997,000 in royalty fees, \$205,000 in inventory costs, and \$199,000 in costs related to packaging, freight, and stability testing. For the six months ended June 30, 2004, we had no product sales and, as a result, no cost of sales.

## *Research and Development*

Research and development expenses for the six months ended June 30, 2005, were \$7.1 million as compared to \$13.5 million for the six months ended June 30, 2004, a decrease of approximately \$6.4 million, or 47.4%. The decrease in research and development expenses was primarily attributable to completion of two Phase 3 clinical trials of Fampridine-SR in SCI, and one Phase 2 clinical trial of Fampridine-SR in MS, during the first quarter of 2004. The SCI clinical development program expense decreased from \$4.7 million for the six months ended June 30, 2004 to \$26,000 for the six months ended June 30, 2005, due to our decision to put the program on hold. The MS clinical development program expense decreased from \$1.3 million for the six months ended June 30, 2004 to \$1.0 million for the six months ended June 30, 2005, a decrease of 23.1%. We expect that expenses associated with our MS clinical development program will increase as we continue our Phase 3 clinical trial.

Other contract expenses increased to \$3.6 million in the six months ended June 30, 2005, from \$3.0 million in the six months ended June 30, 2004, an increase of 20.0%. This increase was a result of expenses of approximately \$3.1 million related to the termination of the valrocemide collaboration in the six months ended June 30, 2005, offset by a \$2.2 million decrease in expenses for the manufacture and stability testing of clinical supplies from the period ended June 30, 2004.

Operating expenses for clinical development and preclinical research and development decreased to \$2.3 million in the six months ended June 30, 2005, from \$4.1 million in the six months ended June 30, 2004, a decrease of \$1.8 million, or 43.9%. This decrease was a result of approximately \$900,000 in administrative support needed for our clinical trials. These expenses also include non-cash stock-based compensation expense of \$246,000 for the six months ended June 30, 2005, and \$1.1 million for the six months ended June 30, 2004.

## *Sales and Marketing*

Sales and marketing expenses for the six months ended June 30, 2005, were \$5.5 million compared to \$1.7 million for the six months ended June 30, 2004, an increase of approximately \$3.8 million or 223.5%. This increase was primarily attributable to \$2.4 million for marketing and distribution and sales administration expense related to the launch of Zanaflex Capsules and the distribution of Zanaflex tablets and \$1.2 million in salaries and benefits related to our Zanaflex Capsules specialty sales force.

## *General and Administrative*

General and administrative expenses for the six months ended June 30, 2005, were \$3.9 million compared to \$8.1 million for the six months ended June 30, 2004, a decrease of approximately \$4.2 million, or 51.9%. Total general and administrative expenses include non-cash stock based compensation expense of \$1.3 million for the six months ended June 30, 2005, as compared to \$4.2 million for the six months ended June 30, 2004, primarily attributable to the repricing in the first quarter of 2004 of options granted prior to 2004. In addition, the six months ended June 30, 2004, included approximately \$1.2 million in outside NDA preparation services related to our Phase 3 trials of Fampridine-SR in SCI.

## *Other Income (Expense)*

Other income (expense) decreased to a loss of \$261,000 for the six months ended June 30, 2005, from a gain of \$31,000 in the six months ended June 30, 2004, a decrease of \$292,000. Interest expense increased by \$312,000 primarily related to a \$6.0 million secured term loan with GE Capital entered into in January 2005. The increase in interest expense was offset by an increase in interest income of \$21,000 during the six months ended June 30, 2005.

*Beneficial Conversion Feature, Accretion of Issuance Costs, Preferred Dividends and Fair Value of Warrants Issued to Convertible Preferred Stockholders*

Charges related to preferred stock remained relatively flat at \$12.2 million for the six months ended June 30, 2005, and \$12.3 million for the six months ended June 30, 2004. These charges primarily comprised accretion of issuance costs on Series E, Series I and Series J mandatorily redeemable convertible preferred stock, accrual of preferred dividend of on Series J and Series K mandatorily redeemable convertible preferred stock, accretion of beneficial conversion feature on Series A through Series I preferred stock for reset in conversion price and accretion of beneficial conversion feature on Series J preferred stock (see Notes 3, 8 and 11 to our consolidated financial statements included in this prospectus).

**Year Ended December 31, 2004 Compared to Twelve Months Ended December 31, 2003 <sup>(1)</sup>**

	Twelve Months Ended December 31, 2003	Year Ended December 31, 2004
	(unaudited)	(in thousands)
Gross sales—Zanaflex	\$ —	\$ —
Less: discounts and allowances	—	(4,417)
Net sales	—	(4,417)
Grant revenue	764	479
Total net revenue	764	(3,938)
Less: cost of sales	—	(771)
Gross profit	764	(4,709)
Operating expenses:		
Research and development	26,228	21,999
Research and development—related party	4,016	—
Sales and marketing	—	4,662
General and administrative	21,220	13,397
Total operating expenses	51,464	40,058
Operating loss	(50,700)	(44,767)
Other income (expense):		
Interest and amortization of debt discount expense	(82)	(385)
Interest and amortization of debt discount expense—related party	(445)	—
Interest income	417	409
Other income	30	2
Total other income (expense)	(80)	26
Net loss	(50,780)	(44,741)
Beneficial conversion feature, accretion of issuance costs, preferred dividends, and fair value of warrants issued to convertible preferred stockholders	(36,277)	(24,746)
Net loss allocable to common stockholders	\$ (87,057)	\$ (69,487)

(1) We changed our fiscal year end from June 30 to December 31, effective for the six months ended December 31, 2003. Accordingly, these amounts are derived from our books and records and represent the accumulation of the period January 1, 2003 to June 30, 2003 and July 1, 2003 to December 31, 2003.

## *Product Sales*

We did not record product sales from the sale of either Zanaflex Capsules or Zanaflex tablets in the year ended December 31, 2004, or the twelve months ended December 31, 2003.

We did not record deferred revenue from Zanaflex Capsules in either period, as the product was not launched until April 2005. Deferred revenue from Zanaflex tablets was \$6.7 million as of December 31, 2004, as compared to \$0 as of December 31, 2003. With respect to the \$6.7 million of deferred revenue at December 31, 2004, approximately \$3.6 million related to product that we acquired from Elan that had an expiration date of less than 12 months at the time we sold it during 2004. We believe there is a high likelihood that this product will be returned, which would result in our inability to recognize revenue related to these sales.

## *Discounts and Allowances*

We recorded discounts and allowances of \$4.4 million for the year ended December 31, 2004, as compared to \$0 for the twelve months ended December 31, 2003. Discounts and allowances for the year ended December 31, 2004, consisted of \$128,000 in cash discounts and \$207,000 for chargebacks and rebates. Additionally, in the year ended December 31, 2004, we took a \$4.1 million charge to establish a reserve for expected returns of Zanaflex tablets sold by Elan prior to our acquisition of Zanaflex. As part of the acquisition of Zanaflex, we agreed to accept any returns of Zanaflex tablets that were returned subsequent to January 17, 2005, including returns of product that was originally sold by Elan.

## *Grant Revenue*

Grant revenue for the year ended December 31, 2004, was \$479,000 compared to \$764,000 for the twelve months ended December 31, 2003. Grant revenue is recognized when the related research expenses are incurred and our performance obligations under the terms of the respective contract are satisfied.

## *Cost of Sales*

We recorded cost of sales of \$771,000 for the year ended December 31, 2004 as compared with \$0 for the twelve months ended December 31, 2003. Cost of sales for the year ended December 31, 2004, consisted of \$519,000 in royalty fees and \$252,000 in inventory costs related to the sale of Zanaflex tablets. For the twelve months ended December 31, 2003, we had no product sales and, as a result, no cost of sales.

## *Research and Development*

Research and development expense for the year ended December 31, 2004, was \$22.0 million, as compared to \$26.2 million for the twelve months ended December 31, 2003, a decrease of approximately \$4.2 million, or 16.0%. Contributing to this decrease was completion of two Phase 3 clinical trials of Fampridine-SR in SCI, and one Phase 2 clinical trial of Fampridine-SR in MS, during the first quarter of 2004. The SCI clinical development program expense decreased to \$5.9 million for the year ended December 31, 2004, as compared to \$7.2 million for the twelve months ended December 31, 2003, a decrease of \$1.3 million, or 18.1%. The MS clinical development program expense decreased to \$2.9 million for the year ended December 31, 2004, as compared to \$3.3 million for the twelve months ended December 31, 2003, a decrease of \$400,000, or 12.1%. We expect that expenses associated with our MS clinical development program will increase as we continue our Phase 3 clinical trial. Our licensing expense decreased to \$0 for the year ended December 31, 2004, as

compared to \$2.0 million for the twelve months ended December 31, 2003. This expense was attributable to an initial payment to Teva for our collaboration agreement for valrocemide.

Other contract expenses increased to \$5.0 million for the year ended December 31, 2004, as compared to \$1.9 million for the twelve months ended December 31, 2003, an increase of \$3.1 million, or 163.2%. This increase is primarily the result of the inclusion of costs related to the drug development and supply of Fampridine-SR in other contract expenses for the year ended December 31, 2004. Prior to the termination of the joint venture with Elan in September 2003, this cost was included in Research and development—related party expense. Also contributing to this increase was a cost of \$914,000 relating to a terminated development program.

Operating expense for clinical development and preclinical research and development decreased to \$7.6 million for the year ended December 31, 2004, as compared to \$11.2 million for the twelve months ended December 31, 2003, a decrease of \$3.6 million, or 32.1%. This decrease was partly attributable to a decline in non-cash stock-based compensation expense to \$1.8 million for the year ended December 31, 2004, as compared to \$3.0 million for the twelve months ended December 31, 2003. The decrease was also attributable to other expenses in the twelve months ended December 31, 2003, which included \$508,000 of NDA expense and a \$452,000 bonus accrual. In addition, research and development lab expense for the year ended December 31, 2004 was \$277,000, as compared to \$557,000 for the twelve months ended December 31, 2003, a decrease of \$280,000.

Research and development—related party expenses for the year ended December 31, 2004, were \$0, as compared to \$4.0 million for the twelve months ended December 31, 2003. This decrease was attributable to the termination of our MSRD joint venture with Elan in September 2003, after which all MSRD-related research and development expenses were included in clinical development expenses. Research and development—related party expenses for the twelve months ended December 31, 2003 also included \$2.0 million related to termination of the joint venture and \$2.0 million in drug development and supply cost.

#### *Sales and Marketing*

Sales and marketing expense was \$4.7 million for the year ended December 31, 2004, as compared to \$0 for the twelve months ended December 31, 2003. This increase was attributable to the beginning of our commercial efforts after our acquisition of the Zanaflex products in July 2004 and included \$2.1 million in expense for marketing, distribution, and sales administration, \$1.2 million in salaries and benefits, approximately \$765,000 in non-cash stock-based compensation expense, and approximately \$600,000 in additional sales and marketing overhead expenses.

#### *General and Administrative*

General and administrative expense decreased to \$13.4 million for the year ended December 31, 2004, from \$21.2 million for the twelve months ended December 31, 2003, a decrease of approximately \$7.8 million, or 36.8%. This decrease was partly attributable to a decrease in non-cash stock based compensation expense to \$6.5 million for the year ended December 31, 2004, as compared to \$11.8 million for the twelve months ended December 31, 2003, a decrease of approximately \$5.3 million, or 44.9%. In addition, for the twelve months ended December 31, 2003, we had an additional \$1.4 million in financing-related expenses as compared to the year ended December 31, 2004.

#### *Other Income (Expense)*

Other income (expense) increased to a gain of \$26,000 for the year ended December 31, 2004, compared to a loss of \$80,000 for the twelve months ended December 31, 2003, an increase of \$106,000. Interest expense decreased by \$142,000 due to a decrease in interest expense on our EIS convertible promissory notes, offset by an increase in interest expense from our GE Capital notes, and a decrease of \$8,000 in interest income for the year ended December 31, 2004, as compared to the twelve months ended December 31, 2003.

#### *Beneficial Conversion Feature Accretion of Issuance Costs, Preferred Dividends and Fair Value of Warrants Issued to Convertible Preferred Stockholders*

Charges related to preferred stock decreased to \$24.8 million for the year ended December 31, 2004, from \$36.3 million for the twelve months ended December 31, 2003. For the year ended December 31, 2004, charges were primarily comprised of beneficial conversion charges of \$19.5 million on Series E, Series I and Series J convertible preferred stock, accretion of issuance costs of \$106,000, and preferred dividends of \$5.2 million (see Notes 3 and 8 to our consolidated financial statements in this prospectus). For the twelve months ended December 31, 2003, charges were primarily comprised of beneficial conversion charges of \$33.9 million on Series A, B, C, F and H convertible preferred stock, and Series E, I and J mandatorily redeemable convertible preferred stock, accretion of issuance costs of \$86,000, and preferred dividends of \$2.8 million (see Notes 3, 8 and 11 to our consolidated financial statements in this prospectus).

#### ***Year Ended June 30, 2003 Compared to Year Ended June 30, 2002***

##### *Grant Revenue*

Grant revenue for the year ended June 30, 2003, was \$474,000 compared to \$132,000 for the year ended June 30, 2002. For the year ended June 30, 2003, we deferred approximately \$95,000 in grant revenue since it related to funding for the purchase of equipment.

##### *Research and Development*

Research and development expense for the year ended June 30, 2003, was \$17.5 million, as compared to \$11.1 million for the year ended June 30, 2002, an increase of approximately \$6.4 million, or 57.7%. The increase was primarily attributable to acceleration in patient enrollment for both the Phase 2 clinical trial of Fampridine-SR in MS, as well as two Phase 3 clinical trials of Fampridine-SR in SCI. The SCI study expenses increased to \$5.8 million for the year ended June 30, 2003, as compared to \$3.4 million for the year ended June 30, 2002, an increase of \$2.4 million, or 70.6%. The MS study expense increased to \$1.6 million for the year ended June 30, 2003, as compared to \$900,000 for the year ended June 30, 2002.

Operating and other contract expense for clinical development and preclinical research and development increased to \$8.4 million for the year ended June 30, 2003, as compared to \$6.0 million for the year ended June 30, 2002, an increase of \$2.4 million, or 40.0%. These expenses include a non-cash stock-based compensation expense of \$478,000 for the year ended June 30, 2003, as compared to \$455,000 for the year ended June 30, 2002. This increase is also attributable to increased staffing and support required for the new clinical trials.

Research and development-related party expenses were \$2.3 million for the year ended June 30, 2003, as compared to \$4.7 million for the year ended June 30, 2002, a decrease of \$2.4 million, or 51.1%. This decrease in expense was due to reduced development activities by Elan related to Fampridine-SR during the year ended June 30, 2003.

## **General and Administrative**

General and administrative expense of \$6.4 million remained relatively flat for the year ended June 30, 2003, as compared to \$6.6 million for the year ended June 30, 2002. The decrease in general and administrative expense was primarily due to management's decision to defer spending for market research and medical communications during the year ended June 30, 2003. General and administrative expenses also include non-cash stock based compensation expense of \$1.1 million for the year ended June 30, 2003, as compared to \$950,000 for the year ended June 30, 2002, an increase of approximately \$150,000, or 15.8%.

## **Other Income (Expense)**

Other income (expense) decreased to a loss of \$28,000 for the year ended June 30, 2003, compared to a gain of \$576,000 for the year ended June 30, 2002, a decrease of \$604,000. This decrease was primarily attributable to a decrease in interest income of \$591,000 due to lower average cash balances and lower interest earned on cash balances during the year ended June 30, 2003.

## **Minority Interest**

Minority interest decreased to \$0 for the year ended June 30, 2003, compared to \$580,000 for the year ended June 30, 2002. Elan's previous ownership interest in MSRD, a joint venture that was owned approximately 83% by Acorda and approximately 17% by Elan and another minority stockholder, was reflected as minority interest in our consolidated financial statements. In the year ended June 30, 2003, Elan ceased funding its share of the joint venture's expenses, and therefore there is no minority interest for the year ended June 30, 2003. The assets of this joint venture were transferred to us as of September 2003.

## ***Beneficial conversion feature, accretion of issuance costs, preferred dividends and fair value of warrants issued to convertible preferred stockholders***

Charges related to preferred stock increased to \$24.3 million for the year ended June 30, 2003, as compared to \$55,000 for the year ended June 30, 2002. For the year ended June 30, 2003, charges were primarily comprised of accretion of issuance costs of \$66,000 on Series E, Series I and Series J mandatorily redeemable convertible preferred stock, accrual of preferred dividend of \$630,000 on Series J mandatorily redeemable convertible preferred stock, accretion of beneficial conversion feature of \$23.6 million on Series A through Series J preferred stock for reset in conversion price and accretion of beneficial conversion feature of \$1.1 million on Series J preferred stock (see Notes 3, 8 and 11 to our consolidated financial statements included in this prospectus). For the year ended June 30, 2002, charges were primarily comprised of accretion of issuance costs on Series E and Series I mandatorily redeemable convertible preferred stock (see Note 3 and 8 to our consolidated financial statements included in this prospectus).

## **Liquidity and Capital Resources**

We have incurred annual operating losses since inception, and, as of June 30, 2005, we had an accumulated deficit of approximately \$191.0 million. We have financed our operations primarily through private placements of our securities, and, to a lesser extent, from loans and government grants. From our inception through June 30, 2005, we raised aggregate net proceeds of \$147.9 million through private placements of equity securities. In January 1997, EIS loaned us an aggregate of \$7.5 million pursuant to two convertible promissory notes to partly fund our research and development activities, all of which was outstanding as of June 30, 2005. In August and September 2002, we financed certain of our fixed assets through two financing agreements with General Electric Capital Corporation, or GE Capital, in the aggregate amount of approximately \$1.2 million, of which \$273,769 was outstanding as

of June 30, 2005. In January 2005, we entered into a \$6.0 million senior secured term loan, collateralized by all of our personal property and fixtures.

At June 30, 2005, cash and cash equivalents and short-term investments were approximately \$14.7 million, as compared to \$32.9 million at June 30, 2004. Our cash and cash equivalents consist of highly liquid investments with original maturities of three months or less at date of purchase and consist of time deposits and investments in money market funds with commercial banks and financial institutions and high-quality government and investment grade corporate bonds. Also, we maintain cash balances with financial institutions in excess of insured limits. We do not anticipate any losses with respect to such cash balances. Our short-term investments consist of corporate debt securities with original maturities greater than three months and less than one year. The balance of these investments was \$11.4 million as of June 30, 2005, as compared to \$24.7 million as of June 30, 2004. As of June 30, 2005, our cash and cash equivalents were \$3.3 million, and our short-term investments were \$11.4 million, as compared to \$8.2 million and \$24.7 million respectively, as of June 30, 2004.

#### *Net Cash Used by Operations*

Net cash used by operations was \$18.1 million, \$24.5 million, and \$27.2 million for the years ended June 30, 2002 and 2003 and the year ended December 31, 2004, respectively, and \$19.3 million and \$12.2 million for the six months ended June 30, 2004 and 2005, respectively. Cash used by operations for the six months ended June 30, 2005 was primarily attributable to a net loss of \$18.5 million, an increase in accounts receivable of \$2.2 million, an increase in return-related liabilities of \$1.7 million and an increase in inventory of \$3.8 million attributable to the launch of Zanaflex Capsules. Cash used in operations for the six months ended June 30, 2005, was offset by stock compensation expense of \$2.0 million, an increase in deferred revenue of \$9.7 million from Zanaflex sales, and a \$2.3 million increase in accounts payable, accrued expenses and other current liabilities, primarily due to \$1.6 million in inventory-related invoices. Amounts classified as royalty payable as of December 31, 2003, are included in accounts payable, accrued expenses and other current liabilities as of June 30, 2004, due to their reclassification as a current liability.

Cash used by operations for the six months ended June 30, 2004, of \$19.3 million was primarily due to a net loss of approximately \$22.9 million and a decrease in accounts payable of \$1.9 million due to timing of our payments. The cash used in operations for the six months ended June 30, 2004, was offset by stock compensation expense of \$5.3 million.

Cash used by operations for the year ended December 31, 2004, of \$27.2 million was due to a net loss of \$44.7 million, a \$1.9 million increase in accounts receivable from Zanaflex sales and a \$1.9 million decrease in accounts payable; accrued expenses and other current liabilities, primarily due to a \$1.1 million decrease in bonus accruals. Cash used by operations for the year ended December 31, 2004, was offset by stock compensation expense of \$9.1 million, depreciation and amortization expense of \$1.2 million; an increase in deferred product revenue of \$6.7 million; an increase in returns liability of \$4.1 million; and an increase in royalty payable of \$750,000 for Zanaflex sales.

Cash used by operations for the year ended June 30, 2003, of \$24.5 million was due to a net loss of \$25.7 million; a reduction in amounts due to Elan of \$593,000, primarily due to lower drug development charges; an increase in prepaid expenses and other current assets of \$402,000; a \$154,000 increase in interest receivable on our short term investments and an increase in other receivables and an increase in grant receivable of \$214,000. The cash used in operations for the year ended June 30, 2003 was offset by stock compensation expense of \$1.6 million, depreciation and amortization expense of \$740,000 and amortization of debt discount relating to our \$7.5 million aggregate principal amount convertible notes payable to EIS of \$219,000.

Cash used by operations for the year ended June 30, 2002, of \$18.1 million was due to a net loss of approximately \$21.2 million and minority interest of \$580,000. The cash used in operations for the

year ended June 30, 2002, was partially offset by stock compensation expenses of \$1.4 million; expensing of warrants and beneficial conversion charge of \$618,000 on Series C preferred stock issued to Elan, an increase of \$580,000 primarily due to increased drug development charges from Elan, depreciation and amortization expense of \$417,000, amortization of debt discount relating to our \$7.5 million aggregate principal amount of convertible promissory notes payable to EIS of \$258,000, increase in accounts payable and accrued expenses and other current liabilities of \$224,000 due to higher expenses incurred as research and development projects progress.

#### *Net Cash Used in/Provided by Investing*

Net cash used in investing activities for the six months ended June 30, 2005, was \$2.2 million, primarily due to the net reinvestment of \$2 million of surplus cash into marketable securities. In addition, we purchased property and equipment of \$119,000 in the six months ended June 30, 2005. Net cash provided by investing activities for the six months ended June 30, 2004, was \$7.2 million, primarily due to \$7.5 million in net proceeds received from maturities of short-term investments. Net cash provided by investing activities for the six months ended June 30, 2004, was offset by \$275,000 in purchases of property and equipment. We had no material commitments to purchase property and equipment as of June 30, 2005.

Net cash provided by investing activities for the year ended December 31, 2004, was \$18.8 million, primarily due to \$22.8 million in net proceeds received from maturities of short-term investments. Net cash provided by investing activities for the year ended December 31, 2004, was offset by \$3.5 million in purchases of intangible assets related to the acquisition of Zanaflex and \$532,000 in purchases of property and equipment.

Net cash used in investing activities for the year ended June 30, 2003 was \$10.2 million, primarily due to the net reinvestment of \$9.4 million of surplus cash into marketable securities and purchase of property and equipment of \$748,000. Net cash used in investing activities for the year ended June 30, 2002 was \$5.1 million and was primarily due to purchase of short-term investment of \$2.8 million and purchase of purchased property and equipment of \$2.2 million in the year ended June 30, 2002. We incurred significant expenses in acquiring property and equipment in the year ended June 30, 2002 as a result of the expansion of our office and laboratory facilities.

#### *Net Cash Used in/Provided by Financing*

Net cash provided by financing activities for the six months ended June 30, 2005, was \$5.8 million, primarily due to \$5.8 million in proceeds received from the GE Capital senior secured loan and \$215,000 in proceeds received from issuance of warrants to GE Capital in conjunction with the issuance of the GE Capital senior secured loan, offset by approximately \$173,000 in repayments of notes payable.

Net cash provided by financing activities for the six months ended June 30, 2004, was \$11.3 million, primarily due to proceeds from issuance of preferred stock. In March 2004, we completed a private placement of 1,533,327 shares of Series K mandatorily redeemable convertible preferred stock at \$7.50 per share for an aggregate purchase price of approximately \$11.5 million. Issuance costs of \$55,000 related to this financing were netted against proceeds received. Net cash provided by financing activities for the six months ended June 30, 2004, was offset by \$158,000 in repayments of notes payable to GE Capital.

Net cash provided by financing activities for the year ended December 31, 2004, was \$11.1 million, primarily due to proceeds from issuance of the Series K preferred stock. Net cash provided by financing activities for the year ended December 31, 2004, was offset by \$324,000 in repayments of notes payable to GE Capital.

Net cash provided by financing activities in the years ended June 30, 2003, and 2002 was \$55.9 million and \$2.1 million, respectively. The cash provided in the year ended June 30, 2003, was primarily due to proceeds of \$55.3 million from the issuance of Series J mandatorily redeemable stock. Issuance costs of \$334,000 related to this financing were netted against proceeds received. In the year ended June 30, 2003, also we entered into two financing agreements with GE Capital and received aggregate proceeds in the amount of \$1.2 million. In the year ended June 30, 2002, we received proceeds from the issuance of preferred stock of approximately \$1.3 million. Proceeds from the issuance of preferred stock primarily consisted of the issuance of 150,000 Series B preferred stock for an aggregate purchase price of \$300,000 and 333,333 Series C preferred stock for an aggregate purchase price of \$1.0 million to Elan as part of our January 1997 License and Supply Agreement.

#### *Future Capital Needs*

Our future capital requirements will depend on a number of factors, including the amount of revenue generated from sales of Zanaflex Capsules, the continued progress of our research and development activities, the timing and outcome of regulatory approvals, the amount and timing of milestone or other payments made under collaborative agreements, the costs involved in preparing, filing, prosecuting, maintaining, defending and enforcing patent claims and other intellectual property rights and the acquisition of licenses to new products or compounds. We expect to incur losses from operations for at least the next several years as we continue to expand our sales and marketing infrastructure and increase our marketing efforts to support the commercialization of Zanaflex Capsules, continue our clinical development of Fampridine-SR and advance our preclinical programs.

We believe our existing cash and cash equivalents and short-term investment, together with the net proceeds from this offering, will be sufficient to fund our operating expenses, debt repayments and capital equipment requirements for approximately the next 18 months from the date of this prospectus. To the extent our capital resources are insufficient to meet future operating requirements, we will need to raise additional capital or incur indebtedness to fund our operations. We may be unable to obtain additional debt or equity financing on acceptable terms, if at all. If adequate funds are not available, we may be required to curtail our sales and marketing efforts, delay, reduce the scope of or eliminate some of our research and development programs or obtain funds through arrangements with collaborative partners or others that may require us to relinquish rights to certain product candidates that we might otherwise seek to develop or commercialize independently.

#### **Contractual Obligations and Commitments**

In January 2005, we entered into a \$6.0 million senior secured term loan with GE Capital. We are required to pay monthly installments until February 2008, with interest-only payments for the first six months followed by principal and interest payments for the remaining 29 months. Interest is fixed at the rate of 9.93% per annum. The loan is secured by all of our personal property and fixtures.

In 2002, we entered into two financing agreements with GE Capital for an aggregate amount of approximately \$1.2 million, to finance the purchase of certain property and equipment. One note is for \$766,781 and bears an annual fixed interest rate of 8.88%. The second note is for \$386,731 and bears an annual fixed interest rate of 8.57%. These financing arrangements are secured by certain of our property and equipment and do not include any debt covenants. We are required to pay monthly installments until October 2006. The aggregate principal payments required subsequent to June 30, 2005 are \$129,115 in 2005, and \$144,654 in 2006.

In January 1997, EIS loaned us an aggregate of \$7.5 million pursuant to two convertible promissory notes. One promissory note in the principal amount of \$5.0 million bears interest at a rate of 3% which began on the first anniversary of the note. The other promissory note in the amount of \$2.5 million is non-interest bearing. The unpaid principal of \$5.0 million note is convertible into shares

of our Series D preferred stock at a conversion price of \$12.50 per share. The \$2.5 million promissory note is convertible after January 22, 1999, into either shares of Series B preferred stock at a conversion price of \$2.00 per share or into an undesignated series of preferred stock at a conversion price equal to 80% of the most recently completed equity financing, whichever conversion price is greater. If our preferred stock is no longer outstanding, these notes will be convertible into shares of our common stock. Principal and interest are repayable, if not converted, ratably over a seven-year period, beginning one year after we receive regulatory approval for certain products to be developed, subject to limitations related to gross margin on product sales. If we and Elan determine that regulatory approval will not likely occur, the \$5.0 million promissory note will automatically convert into the underlying common stock. If our license and supply agreements with Elan are terminated for any other reason, the principal and interest is repayable ratably over 15 years.

Under our Zanaflex purchase agreement with Elan, we are obligated to make milestone payments to Elan of up to \$19.5 million based on cumulative gross sales of Zanaflex tablets and Zanaflex Capsules. As of June 30, 2005, we have made or accrued \$1.5 million of these milestone payments in the consolidated financial statements. Under our Zanaflex supply agreement with Elan, we are required to provide to Elan an 18-month rolling forecast at the beginning of each month and a two-year forecast not later than July 1 of each year. We are bound to order one hundred percent of the forecast required quantities for each five month period immediately following each monthly forecast report. At June 30, 2005, the forecast requirement for the five month period following June 30, 2005 amounted to approximately \$3.4 million.

Under our Fampridine-SR license agreement with Elan, we are obligated to make milestone payments to Elan of up to \$15.0 million over the life of the contract and royalty payments as a percentage of product sales. In addition, under our various other research, license and collaboration agreements we are obligated to make milestone payments of up to an aggregate of approximately \$16.9 million over the life of the contracts.

The following table summarizes our contractual obligations as of December 31, 2004. This table should be read in conjunction with the accompanying notes to our consolidated financial statements:

<b>Twelve Month Period Ending December 31,</b>	<b>Notes Payable(1)</b>	<b>Operating Leases</b>
	(in thousands)	
2005	\$ 1,202	\$ 642
2006	2,462	642
2007	2,558	642
2008	225	53
<b>Total</b>	<b>\$ 6,447</b>	<b>\$ 1,979</b>

(1) The notes payable represents the principal and interest payable on the GE Capital notes payable and does not include the \$7.5 million aggregate principal amount of convertible notes payable to EIS or milestone payments under our license agreements as these amounts are payable on contingent events.

Under the terms of the employment agreement with our chief executive officer, Ron Cohen, we are obligated to pay severance under certain circumstances. If the employment agreement is terminated by us or by our chief executive officer for reasons other than for cause, we must pay (i) an amount equal to the base salary the chief executive officer would have received during the fifteen month period immediately following the date of termination, plus (ii) bonus equal to last annual bonus received by chief executive officer multiplied by a fraction, the numerator of which shall be the number of days in the calendar year elapsed as of the termination date and the denominator of which shall be 365.

## **Subsequent Events**

For a discussion of material events that have taken place subsequent to June 30, 2005, please refer to Note 16 to our consolidated financial statements included in this prospectus.

## **Quantitative and Qualitative Disclosures about Market Risk**

Our financial instruments consist of cash and cash equivalents, short-term investments, grant receivable, notes payable, convertible notes payable and accounts payable. The estimated fair values of all of our financial instruments, excluding convertible notes payable to EIS, approximate their carrying amounts at June 30, 2005. The terms of these notes are disclosed at Note 11 to the consolidated financial statements.

We have cash equivalents and marketable securities at June 30, 2005, which are exposed to the impact of interest rate changes and our interest income fluctuates as our interest rates change. Due to the short-term nature of our investments in money market funds and corporate debt securities, the carrying value of our cash equivalents and marketable securities approximate their fair value at June 30, 2005.

We maintain an investment portfolio in accordance with our investment policy. The primary objectives of our investment policy are to preserve principal, maintain proper liquidity to meet operating needs and maximize yields. Although our investments are subject to credit risk, our investment policy specifies credit quality standards for our investments and limits the amount of credit exposure from any single issue, issuer or type of investment. Our investments are also subject to interest rate risk and will decrease in value if market interest rates increase. However, due to the conservative nature of our investments and relatively short duration, interest rate risk is mitigated. We do not own derivative financial instruments. Accordingly, we do not believe that there is any material market risk exposure with respect to derivative or other financial instruments.

## **Effects of Inflation**

Our most liquid assets are cash, cash equivalents and short-term investments. Because of their liquidity, these assets are not directly affected by inflation. Because we intend to retain and continue to use our equipment, furniture and fixtures and leasehold improvements, we believe that the incremental inflation related to replacement costs of such items will not materially affect our operations. However, the rate of inflation affects our expenses, primarily employee compensation and contract services, which could increase our level of expenses.

## **Critical Accounting Policies and Estimates**

The following discussion of critical accounting policies identifies the accounting policies that require application of management's most difficult, subjective or complex judgments, often as a result of the need to make estimates about the effect of matters that are inherently uncertain and may change in subsequent periods. It is not intended to be a comprehensive list of all of our significant accounting policies, which are more fully described in Note 2 of the notes to the consolidated financial statements included in this prospectus. In many cases, the accounting treatment of a particular transaction is specifically dictated by generally accepted accounting principles, with no need for management's judgment in their application. There are also areas in which the selection of an available alternative policy would not produce a materially different result. We have identified the following as our areas of critical accounting policies: sales revenue recognition, research and development, income taxes, and stock-based compensation.

## **Revenue Recognition**

We defer revenue on product shipments to our wholesalers based upon SFAS No. 48, *Revenue Recognition When the Right of Return Exists*, which among other criteria requires that future returns can

be reasonably estimated in order to recognize revenue. The amount of future tablet returns is uncertain due to generic competition and anticipated customer conversion to Zanaflex Capsules. Zanaflex Capsules are a new product with no historical return data. Due to the uncertainty of returns for both products, we are accounting for these product shipments using a consignment model. Under the consignment model, we do not recognize revenue upon product shipment. For these product shipments, we invoice the wholesaler, record deferred revenue at gross invoice sales price, and classify the inventory held by the wholesaler as "consigned inventory". We recognize revenue on consigned inventory when such inventory is prescribed to the end-user, on a first-in first-out (FIFO) basis. The revenue to be recognized is based on (1) the estimated prescription demand based on pharmacy sales for our products, (2) analysis of third-party information, including third-party market research data, (3) internal product sales information and (4) wholesaler inventory levels and re-order information. Our sales and revenue recognition for such consigned inventory reflect our estimates of actual product prescribed to the end-user.

At December 31, 2004, and June 30, 2005, we had deferred revenue from Zanaflex tablets of \$6.6 million and \$11.0 million, respectively, of which \$3.6 million and \$3.0 million (unaudited), respectively, was related to product acquired from Elan that had an expiration date of less than 12 months at the time we sold it during 2004. We believe there is a high likelihood that this product will be returned, which would result in our inability to recognize related revenue.

If such product is returned the deferred revenue liability upon a return would offset the associated receivable or any credit we may issue if the wholesaler previously paid the invoice. Our net revenues represent total revenues less allowances for customer credits, including estimated discounts, rebates and chargebacks. Product shipping and handling costs are included in cost of sales. At the time revenue is recognized, an adjustment to revenue is recorded for estimated chargebacks, rebates and discounts. In addition, we record a charge to cost of goods sold for estimated product returns at the time of product shipment to wholesalers adjusted to reflect known changes in the factors that impact such reserves. Reserves for chargebacks, rebates and discounts are established based on contractual terms with customers, analysis of historical levels of discounts, chargebacks and rebates, communications with customers and purchased information about the rate of prescriptions being written and the levels of inventory remaining in the distribution channel as well as expectations about the market for each product and anticipated introduction of competitive products.

As part of the acquisition of Zanaflex, we agreed to accept any returns of Zanaflex tablets that were returned subsequent to January 17, 2005, including returns of product that was originally sold by Elan. Product returns prior to that date were the responsibility of Elan. We have recorded a liability of \$4.1 million in 2004 for the remaining estimated returns of Zanaflex tablets sold by Elan. Under our return policy, our obligation to accept returns for product sold by Elan expires in June 2006.

## **Research and Development**

Research and development expenses include the costs associated with our internal research and development activities including, salaries and benefits, occupancy costs, and research and development conducted for us by third parties, such as sponsored university-based research, and clinical trial vendors. In addition, research and development expenses include expenses related to grant revenue and the cost of clinical trial drug supply shipped to our clinical study vendors. We account for our clinical study costs by estimating the total cost to treat a patient in each clinical trial and recognizing this cost as we estimate when the patient receives treatment, beginning when the patient enrolls in the trial. This estimated cost includes payments to the trial site and patient-related costs, including laboratory costs related to the conduct of the trial. Cost per patient varies based on the type of clinical trial, the site of the clinical trial, and the length of the treatment period for each patient. As actual costs become known to us, we adjust our accrual; such changes in estimate may be a material change in our clinical study accrual, which could also materially affect our results of operations.

## **Income Taxes**

As part of the process of preparing our financial statements we are required to estimate our income taxes in each of the jurisdictions in which we operate. We account for income taxes by the liability method. Under this method, deferred income taxes are recognized for tax consequences in future years of differences between the tax bases of assets and liabilities and their financial reporting amounts at each year-end, based on enacted laws and statutory tax rates applicable to the periods in which the differences are expected to affect taxable income. Valuation allowances are provided if, based upon the weight of available evidence, it is more likely than not that some or all of the deferred tax assets will not be realized.

We have not recorded any tax provision or benefit for the years ended June 30, 2002 and 2003 and December 31, 2004 and for the six months ended June 30, 2005. We have provided a valuation allowance for the full amount of our net deferred tax assets since realization of any future benefit from deductible temporary differences and net operating loss carry-forwards cannot be sufficiently assured at June 30, 2005.

As of June 30, 2005, we had available net operating loss carry-forwards of approximately \$60.6 million for federal and state income tax purposes, which are available to offset future federal and state taxable income, if any, and expire between 2009 and 2024 and research and development tax credit carry-forwards of approximately \$1.4 million for federal income tax reporting purposes which are available to reduce federal income taxes, if any, through 2018. Since our inception, we have incurred substantial losses and expect to incur substantial and recurring losses in future periods. The Internal Revenue Code of 1986, as amended, the Code, provides for a limitation of the annual use of net operating loss and research and development tax credit carry forwards (following certain ownership changes, as defined by the Code) that could significantly limit our ability to utilize these carry-forwards. We have experienced various ownership changes, as defined by the Code, as a result of past financings. Accordingly, our ability to utilize the aforementioned carry-forwards may be limited. Additionally, because U.S. tax laws limit the time during which these carry forwards may be applied against future taxes we may not be able to take full advantage of these attributes for federal income tax purposes.

## **Stock-Based Compensation**

We account for options and restricted stock granted to employees and directors in accordance with Statement of Financial Accounting Standards ("SFAS") No. 123, *Accounting for Stock-Based Compensation*, and related interpretations. As such, compensation expense is recorded on stock option grants based on the fair value of the options granted, which is estimated on the date of grant using the Black-Scholes option-pricing model and it is recognized on a straight-line basis over the vesting period. Compensation expense for restricted stock granted is based on the fair value of the restricted stock granted and is recognized on a straight-line basis over the vesting period. We account for stock options granted to non-employees on a fair-value basis in accordance with SFAS No. 123, Emerging Issues Task Force Issue No. 96-18, *Accounting for Equity Instruments That Are Issued to Other Than Employees for Acquiring, or in Conjunction with Selling, Goods or Services*, and FASB Interpretations No. 28, *Accounting for Stock Appreciation Rights and Other Variable Stock Option or Award Plans an Interpretation of APB Opinion No. 15 and 25*. As a result, the non-cash charge to operations for non-employee options with vesting or other performance criteria is affected each reporting period by changes in the estimated fair value of our common stock. The two factors which most affect charges or credits to operations related to stock-based compensation are the fair value of the common stock underlying stock options for which stock-based compensation is recorded and the volatility of such fair value. If our estimates of the fair value of these equity instruments change, it would have the effect of changing compensation expenses. Because shares of our common stock have not been publicly traded, we estimate the fair value of our common stock considering, among other factors, the most recent previous sale of convertible preferred stock (pro forma for the 1-for-1.3 reverse split that we intend to effect on or about the date of this prospectus). We do not discount the issuance price of our preferred stock in estimating the fair value of our common stock.

## BUSINESS

Acorda Therapeutics is a commercial-stage biopharmaceutical company dedicated to the identification, development and commercialization of novel therapies that improve neurological function in people with MS, SCI and other disorders of the central nervous system. Our marketed drug, Zanaflex Capsules, is FDA-approved for the management of spasticity. Our lead product candidate, Fampridine-SR, is in a Phase 3 clinical trial for the improvement of walking ability in people with MS. Our preclinical programs also target MS and SCI as well as other CNS disorders, including stroke and traumatic brain injury.

Approximately 650,000 people in the United States suffer from MS or SCI and the combined annual cost of treatment for these conditions exceeds \$13 billion. In addition, it is estimated that a total of approximately 9 million people live with the long-term consequences of traumatic brain injury and stroke in the United States. Our goal is to continue to grow as a fully-integrated biopharmaceutical company by commercializing therapeutic products, developing our product candidates and advancing our preclinical programs for these large and underserved markets.

### Company Highlights

- *Our marketed drug, Zanaflex Capsules, is a differentiated product that addresses our core patient population.* We own all marketing, sales and distribution rights in the United States to Zanaflex Capsules and Zanaflex tablets. Both products are FDA-approved for the management of spasticity, a symptom of many CNS disorders, including MS and SCI. These products contain tizanidine, one of the two leading treatments for spasticity. Zanaflex Capsules are an ideal strategic fit with our therapeutic focus and expertise. We believe that Zanaflex Capsules, which we launched in April 2005, offer important benefits over Zanaflex tablets and generic equivalents of Zanaflex tablets. When taken with food, Zanaflex Capsules are absorbed into the blood differently than the tablets, resulting in a lower and more gradual rise of peak blood levels. As a result, Zanaflex tablets and generic tizanidine tablets are not AB-rated with Zanaflex Capsules by the FDA, meaning that the FDA does not consider the tablet products to be therapeutically equivalent to Zanaflex Capsules. Therefore, under state laws, pharmacists may not properly substitute the tablets when filling a prescription for Zanaflex Capsules. In addition, Zanaflex Capsules are available in a higher dose and may be easier to take by people who have difficulty swallowing.
- *Our established specialty sales and marketing infrastructure provides a platform for growth.* To support our commercialization of Zanaflex Capsules, we have established an internal sales force of 14 highly-experienced people who call on neurologists and other prescribers specializing in treating patients with spasticity. Members of this sales force also call on managed care organizations, pharmacists and wholesale drug distribution customers. We may expand this specialty sales force in the future to extend our reach among prescribers in the MS and SCI communities and our patient education outreach. In addition, Cardinal Health provides approximately 160 sales representatives to call on primary care physicians who currently prescribe Zanaflex tablets or generic tizanidine tablets. We also have a contract with Access Worldwide Communications to provide a small, dedicated sales force of pharmaceutical telesales professionals to contact primary care physicians, specialty physicians and pharmacists. We believe that the sales and marketing expertise we develop with Zanaflex Capsules will accelerate our commercialization of Fampridine-SR, if approved, since the target prescribers for both overlap substantially.
- *Our lead product-candidate Fampridine-SR is in a Phase 3 clinical trial for improvement of walking ability in people with MS.* We are currently conducting a Phase 3 clinical trial under an SPA issued by the FDA. The FDA has agreed that this trial, if successful, could qualify as one of the

pivotal efficacy studies required for drug approval. We believe Fampridine-SR is the first potential therapy in late-stage clinical development for MS that seeks to improve the function of damaged nerve fibers and would be complementary to existing drugs used to treat MS. To our knowledge, there are no current therapies approved or in development that improve walking ability in people with MS.

- *Our preclinical nerve regeneration and remyelination programs have broad potential applicability.* We have three preclinical programs focused on novel approaches to repair damaged components of the CNS. We believe all of our preclinical programs—chondroitinase, neuregulins and remyelinating antibodies—have the potential to be first-in-class therapies. While these programs have initially been focused on MS and SCI, we believe they may be broadly applicable across a number of CNS disorders, including stroke and traumatic brain injury, because many of the mechanisms of tissue damage and repair are similar. We believe that our preclinical programs also have applicability beyond the nervous system, including in such fields as orthopedics, cardiology, oncology and ophthalmology.
- *Our extensive scientific and medical network extends our reach and expertise in the core focus areas of MS and SCI.* We have an established advisory team and network of well-recognized scientists, clinicians and opinion leaders in the fields of MS and SCI. Depending on their expertise, these advisors provide assistance in trial design, conduct clinical trials, keep us apprised of the latest scientific advances and help us identify and evaluate business development opportunities. In addition, we have recruited over 35 MS centers and 80 SCI rehabilitation centers in the United States and Canada to conduct our clinical trials. Our clinical management team has extensive experience in the areas of MS and SCI and works closely with this network.

## **Background and Market Opportunity**

### ***The Challenge of Nervous System Disorders***

The spinal cord and brain together comprise the CNS. The billions of nerve cells that make up the CNS, in conjunction with the nerve bundles that run through all parts of the body, which is called the peripheral nervous system, transmit the electrical impulses necessary to sustain, regulate and monitor every aspect of human life. The spinal cord serves as the master link between the brain and the body and carries information that regulates movement, sensation and involuntary functions, such as breathing, blood pressure, temperature control, and bladder, bowel and sexual functions.

Nerve impulses travel within and between the brain and spinal cord via long, thin fibers, or axons, that transmit information to other nerve cells through microscopic junctions called synapses. When axons are damaged or lost, they do not normally regenerate, and there is only very limited adaptability, or plasticity, of the surviving axons that allow them to take over the role of damaged or lost axons. The myelin sheath that surrounds axons in the brain and spinal cord provides insulation that facilitates the transmission of nerve impulses. We refer to the axon and its surrounding myelin sheath as a nerve fiber. The myelin sheath is composed of multiple layers of tightly packed cell membrane and is vulnerable to damage in conditions like MS and SCI. Once damaged, it is often not effectively repaired. Although nerve fibers can survive in a demyelinated state, their ability to conduct nerve impulses may be completely lost or severely compromised.

### ***Our Approach to the Market for CNS Disorders***

We are focused on identifying, developing and commercializing novel pharmaceutical products that address large and underserved CNS markets. We view MS and SCI as the primary markets for our

products as well as strategic points of access to a broad range of additional neurological conditions for the following reasons:

- Focusing on both MS and SCI provides insight into chronic and acute CNS conditions. MS represents a chronic degeneration of the CNS, whereas SCI represents an acute CNS injury followed by a relatively stable chronic condition.
- Many of the mechanisms of secondary tissue damage and potential repair in MS and SCI are shared with other conditions, including stroke and traumatic brain injury.
- The functional deficits and symptoms suffered by MS and SCI patients, such as walking impairments, spasticity and loss of bladder and bowel function, are shared by other CNS disorders.
- A treatment that protects the spinal cord from the consequences of injury, regenerates neural connections, remyelinates or optimizes function of surviving structures in the spinal cord is likely to also be applicable to many conditions affecting the brain and the rest of the nervous system.

For people with MS, SCI and similar chronic neurological conditions, even relatively small and incremental improvements in CNS function can produce meaningful benefits in their quality of life.

### ***Spasticity***

Spasticity refers to the often painful involuntary tensing, stiffening or contracting of muscles. Spasticity is not a disease but a symptom of other conditions, such as MS, SCI, stroke, traumatic brain injury and cerebral palsy, where portions of the nervous system that control voluntary movement have been damaged. This damage results in the nerve cells in the spinal cord becoming disconnected from controlling centers in the brain and, as a result, transmitting unregulated impulses to the muscles. People who have spasticity may not experience it all the time—it may be triggered by a stimulus, such as pain, pressure sores, cold weather or a urinary tract infection. Up to 75% of people with chronic SCI, and the majority of people with MS, experience some form of spasticity. We Move, a non-profit organization dedicated to movement disorders, estimates that spasticity affects approximately 500,000 people in the United States and over 12 million worldwide.

Current treatments for spasticity are focused on reducing spasm frequency, pain or irritating stimuli that can provoke spasticity. Treatment of spasticity often involves a combination of physical therapy and oral medications. Baclofen and tizanidine, the active ingredient in the Zanaflex products, are the two most frequently prescribed oral medications for spasticity. For more intractable spasticity, treatments sometimes include surgical or chemical destruction of nerve roots in the affected area.

### ***Multiple Sclerosis***

The National Multiple Sclerosis Society, or NMSS, currently estimates that 400,000 people in the United States have multiple sclerosis. The NMSS estimates that the medical costs associated with treating MS in the United States were approximately \$6.2 billion in 2004. Medications accounted for approximately \$3.5 billion of these costs. MS is more prevalent in Caucasians and women and is generally diagnosed between the ages of 20 and 50.

MS is a degenerative CNS disorder in which the immune system attacks and damages the insulating myelin sheath. This damage, which can occur at multiple sites in the CNS, blocks or diminishes conduction of electrical impulses. People with MS may suffer impairments in any number of neurological functions. These impairments vary from individual to individual and over the course of time, depending on which parts of the brain and spinal cord are affected, and often include difficulty walking, spasticity, fatigue, lack of stamina and loss or disturbance of vision. They may also include loss of sensation, loss of bowel and bladder control, sexual dysfunction, depression, neuropathic pain,

muscle paralysis, dizziness, tremors and cognitive difficulties. Individuals vary in the severity of the impairments they suffer on a day-to-day basis, with impairments becoming better or worse depending on the activity of the disease on a given day. An individual with MS may function normally one day and experience one or more symptoms of MS the next.

MS is generally classified by how the disease progresses. The most common classification is relapsing-remitting MS, in which people go through periods during which their disease is relatively stable or in remission, only to experience a recurrence of their disease, known as a relapse, which creates additional damage and loss of function. Approximately 10% of MS cases in the United States are diagnosed as primary progressive MS, which does not involve distinct attacks but rather a steady worsening of symptoms. Secondary progressive MS involves an initial period of relapsing-remitting disease followed by a steady worsening that is punctuated by more severe flare-ups and partial remissions. Most people with relapsing-remitting disease will eventually convert to secondary progressive disease, though this may not occur for many years.

There are no current treatments that address the weakness and loss of mobility that is a major aspect of the progressive disability experienced by people with MS. Existing treatments are classified as relapse management, disease course management and symptom relief.

*Relapse Management.* The majority of neurologists treating people with MS use intravenous high-dose corticosteroids for the treatment of sudden and severe relapses. Generally, people experiencing a severe relapse receive a four-day course of steroids on either an in-patient or out-patient basis. This treatment may shorten the time required for recovery from such a relapse.

*Disease Course Management.* Drugs that modify the immune reactions associated with nerve damage in MS include Avonex, Betaseron, Copaxone and Rebif. These drugs are approved only for the relapsing-remitting form of the disease. Other drugs that suppress the immune system include drugs initially approved to treat cancer, such as Novantrone, which is approved for the treatment of relapsing or secondary progressive MS, and methotrexate. These medications produce a reduction in relapse rate, rather than a halting or reversal of the disease process. They do not restore lost neurological function.

*Symptom Relief.* Doctors also prescribe a number of drugs to address the secondary disabilities, or symptoms, associated with MS. These include treatments for spasticity, fatigue, bladder and bowel control, depression and pain. Baclofen and tizanidine are the most frequently prescribed drugs for spasticity. Commonly prescribed drugs for other symptoms include Ditropan or Detrol for bladder dysfunction, Provigil for fatigue, fluoxetine for depression, and amitriptyline for pain.

### ***Spinal Cord Injury***

According to the National Spinal Cord Injury Statistical Center, approximately 250,000 people in the United States live with the long-term consequences of SCI and approximately 11,000 new spinal cord injuries occur each year, typically in young men. The majority of people with SCI are injured under the age of 30 and live with permanent disability and multiple related medical conditions for more than 40 years after their injury. The National Spinal Cord Injury Database at the University of Alabama estimates that the average lifetime costs directly attributable to SCI for an individual injured at age 25 varies from approximately \$600,000 to \$2.8 million depending on the severity of the injury.

The spinal cord can be injured by physical trauma that bends the neck or body violently, such as vehicular or diving accidents, or by objects that penetrate or impact the spinal cord, such as a bullet or a knife. The spinal cord can also be injured by loss of blood flow due to damage to major blood vessels or during surgical procedures. When an area of the spinal cord is damaged, motor and sensory function are impaired throughout those parts of the body that are below the level of the injury.

Until recently, SCI was considered an untreatable and incurable condition. Within the last two decades, researchers have shown that the spinal cord is not severed in most people with SCI. Rather, stretching or compression of the cord causes nerve fibers and blood vessels to tear and unleashes a secondary process of bleeding, loss of blood flow and inflammation that causes more tissue damage. The majority of people with spinal cord injury have some axons that survive within or around the site of injury. Because of these surviving axons, approximately 50% of people with SCI have some motor and/or sensory function remaining below the level of the injury and are said to have incomplete SCI. Those with no detectable function below the injury level are said to have complete SCI. Researchers have also shown that many axons that survive trauma are damaged and permanently lose part of their myelin sheath.

In addition to the impact of paralysis on mobility and independence, chronic SCI is often associated with several life-altering conditions that vary depending on the individual and the extent of injury. These include spasticity, as well as persistent pain, loss of control of bowel and bladder functions, loss of sexual function, compromised breathing, loss of sensation, and unstable control of blood pressure, heart rate and body temperature. There is no cure for SCI and no treatment available that is capable of improving neurological function. Methylprednisolone, a high-dose steroid, is currently the standard of care in the United States. Methylprednisolone is a one-time treatment administered to the patient immediately following an injury to prevent secondary tissue damage. There are several treatments for the symptoms of SCI, many of which are the same treatments used to address the symptoms of MS. We believe that novel therapies that offer even an incremental improvement in these conditions would have a meaningful impact on the quality of life for people with SCI.

### ***Other Disorders of the Central Nervous System***

Neurological injuries and degenerative diseases of the CNS, including stroke, traumatic brain injury, Parkinson's disease and Alzheimer's disease, are among the most devastating and costly of human ailments. These conditions are most often chronic and historically have been extremely difficult to treat. These disorders, like MS and SCI, involve damage to nerve cells and nerve fibers and would likely benefit from similar approaches to tissue protection and repair. For example, the inflammation process that occurs naturally after many types of tissue injury may damage both injured and healthy CNS cells. As with MS and SCI, these conditions could be treated with interventions that replace nerve cells, stimulate new nerve fiber growth, or increase the adaptability of connections within the nervous system.

### **Our Strategy**

Our strategy is to continue to grow as a fully-integrated biopharmaceutical company focused on the identification, development and commercialization of a range of nervous system therapeutics. We are using our scientific, clinical and commercial expertise in MS and SCI as strategic points of access to additional CNS markets, including stroke and traumatic brain injury. Key aspects of our strategy are:

- *Maximize our revenue opportunity for Zanaflex Capsules.* Our internal and external sales organization targets the relatively small number of prescribers responsible for writing 80% of tizanidine prescriptions in an effort to convert sales of Zanaflex tablets or generic tizanidine tablets to sales of Zanaflex Capsules. We plan to continue to expand our sales and marketing infrastructure and also implement marketing and educational programs to support Zanaflex Capsules. We are seeking FDA approval of improvements in labeling and we will also explore the potential for new indications.
- *Complete the clinical development of and obtain regulatory approval for Fampridine-SR in MS.* We have advanced Fampridine-SR into a Phase 3 clinical trial for the improvement of walking ability in people with MS. The FDA has agreed that this trial, if successful, could be one of the pivotal

trials necessary for regulatory approval. We may also pursue subsequent approvals of Fampridine-SR in additional CNS disorders, including SCI.

- *Leverage the commercial presence of Zanaflex Capsules for the potential launch of Fampridine-SR.* We expect that the sales and marketing expertise we are developing with Zanaflex Capsules will provide a strong foundation for the commercial launch of Fampridine-SR, if approved by the FDA. Target prescribers for both Zanaflex and Fampridine-SR are likely to overlap substantially. Through our acquisition of the Zanaflex products, we have been able to strengthen our long-standing relationships with the physician and patient communities for both MS and SCI.
- *Advance our pipeline of preclinical programs into clinical trials.* We have two preclinical programs focused on remyelination and one on nerve fiber regeneration and enhanced CNS plasticity. In order to advance these programs we are using our in-house scientific expertise and animal modeling capabilities, supplemented by outside service providers and the development work of our partners. We are also seeking partnering and additional grant funding opportunities for these programs.
- *Pursue additional alliances for approved and development stage products.* We believe that our commercial infrastructure, specialty sales force and relationships with clinicians and patient communities for MS and SCI make us an attractive partner to in-license products and clinical programs that would be marketed to these groups. We also intend to enter into co-marketing and co-promotion agreements for marketing our approved products outside of the United States and may enter into co-development agreements for our preclinical programs.

## Our Product Pipeline

Name	Primary Indication	Status	Marketing Rights
Zanaflex Capsules	Spasticity	FDA-approved	U.S.
Zanaflex (tablets)	Spasticity	FDA-approved	U.S.
Fampridine-SR	MS	Phase 3	Worldwide
Chondroitinase Program	SCI	Preclinical	Worldwide
Neuregulin Program	MS	Preclinical	Worldwide
Remyelinating Antibody Program	MS	Preclinical	Worldwide

### ***Zanaflex Products***

Zanaflex Capsules and Zanaflex tablets are short-acting drugs approved by the FDA for the management of spasticity. We acquired all of Elan's U.S. sales, marketing and distribution rights to Zanaflex Capsules and Zanaflex tablets in July 2004. These products contain tizanidine, one of the two leading treatments for the management of spasticity. Zanaflex tablets were approved by the FDA in 1996 and lost compound patent protection in 2002. There are currently 11 generic versions of tizanidine tablets on the market. However, substantial brand loyalty remains in the prescriber community for the Zanaflex brand. Approximately 90% of all prescriptions for tizanidine are written as "Zanaflex," although most are switched automatically at the pharmacy for a generic tizanidine tablet. Zanaflex Capsules were approved by the FDA in 2002, but were never marketed by Elan. We began marketing Zanaflex Capsules in April 2005.

Clinical trials conducted by Elan demonstrated that Zanaflex Capsules, when taken with food, produce average peak levels of tizanidine in a person's blood that are lower and rise more gradually compared to the peak levels following a similar dose of the tablet form. The FDA recognizes these differences and has determined that Zanaflex tablets and generic tizanidine tablets are not

therapeutically equivalent and are not AB-rated to Zanaflex Capsules. As a result, under state pharmacy laws, prescriptions written for Zanaflex Capsules may not be filled by the pharmacist with Zanaflex tablets or generic tizanidine tablets, although some substitution does take place in practice. Zanaflex Capsules are available in 2 mg, 4 mg and 6 mg doses, while tablet formulations are only available in 2 mg and 4 mg doses. The 6 mg capsule gives patients and physicians an additional dosing choice and an opportunity to reduce the number of pills a patient must take daily. In addition, many patients may find capsules easier to swallow than tablets. In addition, people who have difficulty swallowing may open the capsule and sprinkle it on food. The pharmacokinetic effect of sprinkling contents of the capsule on food, however, is different from when the intact capsule is taken with food.

In 2004, retail sales of Zanaflex tablets and generic equivalents of Zanaflex tablets totaled approximately \$300 million in the United States, with Zanaflex tablets accounting for about \$15 million of that amount. The vast majority of prescriptions for these products are written by a relatively small group of prescribers. In 2004, over 117,000 physicians wrote one or more prescriptions for generic tizanidine or Zanaflex tablets. However, 78% of all such prescriptions were generated by approximately 9,200 prescribers. We believe that our internal specialty sales force, contract sales force and contract telesales group, will be able to reach virtually all of these high-volume prescribers.

#### *Sales and promotional support for Zanaflex Capsules*

To support our commercialization of Zanaflex Capsules, we have established a sales and marketing infrastructure consisting of an internal specialty sales force, a contract sales force and a pharmaceutical telesales group. Our internal specialty sales force consists of 14 sales professionals who call on neurologists and other prescribers specializing in treating patients with conditions that involve spasticity. Members of our internal sales force also call on managed care organizations, pharmacists and distribution customers. In addition, Cardinal Health provides us with a contract sales force of approximately 160 sales representatives to market Zanaflex Capsules to primary care physicians who currently prescribe Zanaflex tablets or generic tizanidine tablets. We use a pharmaceutical telesales group to contact primary care physicians, specialty physicians and pharmacists to provide information regarding Zanaflex Capsules or determine their interest in receiving samples of Zanaflex Capsules or a visit from a sales representative.

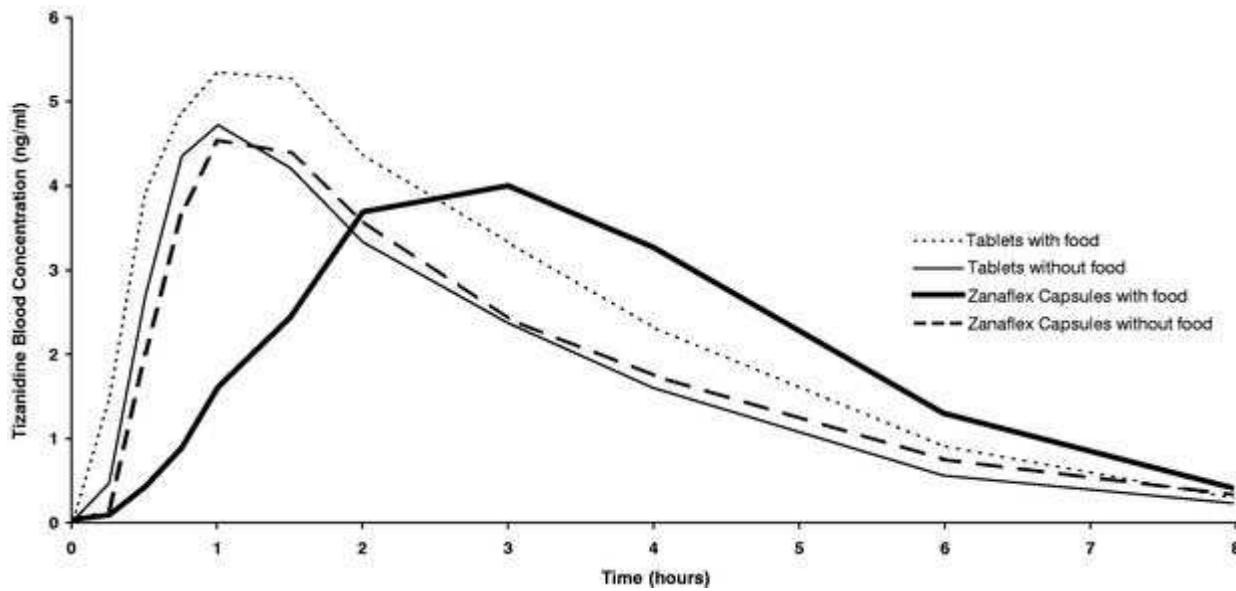
After the introduction of generic tizanidine tablets in June 2002, Elan discontinued promotional and educational support for Zanaflex tablets. To our knowledge, none of the distributors of generic tizanidine or baclofen, the other leading spasticity treatment, which is also generic, has engaged in any educational programs on the treatment of spasticity. Concurrent with our launch of Zanaflex Capsules in April 2005, we initiated a sampling program as well as a number of educational, promotional and drug safety monitoring programs for prescribers and patients. In addition to our programs for prescribers and patients, we also have a number of programs in place to educate pharmacists about Zanaflex Capsules and the pharmacokinetic differences between tizanidine tablets, including generic tizanidine tablets and Zanaflex tablets, and Zanaflex Capsules.

Since April 2005, we have seen continued growth in monthly prescriptions of Zanaflex Capsules. We believe that this trend will continue as we extend our reach into the population of high-volume prescribers of tizanidine. We are seeking FDA approval of improvements in labeling and we will also explore the potential for new indications.

## **Pharmacokinetic differences between Zanaflex Capsules and tizanidine tablets**

Although tizanidine, the active ingredient in Zanaflex Capsules, Zanaflex tablets and generic tizanidine tablets, is the same, there are some important differences between the capsule and tablet formulations. To establish the differences between Zanaflex Capsules and Zanaflex tablets, Elan conducted a single dose clinical trial with 96 healthy volunteers. That trial demonstrated that Zanaflex Capsules, when taken with food, resulted, on average, in a more gradual rise in tizanidine levels in the blood and a lower peak concentration. By contrast, the trial demonstrated that Zanaflex Capsules taken without food resulted in essentially the same pharmacokinetic effect as the tablet formulation of tizanidine. The results of the trial are illustrated in Figure 1 below.

**Figure 1. Average Blood Concentration Over Time**



*Average blood concentrations of tizanidine in subjects following a single dose of 4 mg Zanaflex tablet or a 4 mg dose of Zanaflex Capsules, taken either with or without food.*

As a result of this difference in absorption rate and blood level when taken with food, the FDA has determined that neither Zanaflex tablets nor generic tizanidine tablets are therapeutically equivalent or AB-rated, to Zanaflex Capsules. Therefore, under state pharmacy laws, pharmacists cannot fill prescriptions written for Zanaflex Capsules with Zanaflex tablets or generic tizanidine tablets. The FDA-approved package insert for Zanaflex Capsules contains the following language regarding the differences between the products: "Food has complex effects on tizanidine pharmacokinetics, which differ with different formulations. These pharmacokinetic differences may result in clinically significant differences when (1) switching administration of the tablet between the fed or fasted state, (2) switching administration of the capsule between the fed or fasted state, (3) switching between the tablet and capsule in the fed state, or (4) switching between the intact capsule and sprinkling the contents of the capsule on applesauce. These changes may result in increased adverse events or delayed/more rapid onset of activity, depending on the nature of the switch. For this reason, the prescriber should be thoroughly familiar with the changes in kinetics associated with these different conditions."

The most frequent adverse events associated with the use of tizanidine include dry mouth, drowsiness, fatigue and dizziness. These events are generally mild to moderate and are believed to be dose-related. In one single-dose study where patients were not titrated, two-thirds of patients experienced hypotension. Zanaflex Capsules have a short-acting effect, and patients are advised to take it at the times during the day when they most need relief from spasticity.

## **Fampridine-SR**

Fampridine-SR, our lead product candidate, is currently in a Phase 3 clinical trial for the improvement of walking ability in people with MS pursuant to an SPA issued by the FDA. The FDA has agreed that this trial, if successful, could qualify as one of the pivotal efficacy studies required for drug approval. Fampridine-SR is a small molecule drug contained in a sustained-release tablet form. Laboratory studies have shown that fampridine, the active ingredient in Fampridine-SR, improves impulse conduction in nerve fibers in which the myelin sheath has been damaged. Fampridine is not currently FDA-approved for use in MS or any other indications. We believe that Fampridine-SR could represent a fundamental shift in the treatment of people with MS because it may improve neurological function rather than treating the symptoms or slowing the progression of disease, as current treatments do. We have obtained Orphan Drug designations from the FDA for Fampridine-SR in both MS and incomplete SCI.

In MS, the myelin sheath is damaged by the body's own immune system, causing areas of myelin sheath loss, also known as demyelination. When a nerve fiber is demyelinated after injury, large numbers of the specialized potassium channels on the surface of the axon that are normally hidden or covered by the myelin sheath are exposed and leak potassium ions, causing the nerve fiber to short circuit its electrical impulses. Fampridine blocks these exposed channels, thereby permitting the nerve fiber to transmit impulses again, even in a demyelinated state. Fampridine may also serve to amplify electrical signals at sites of contact or synapses between nerve cells by blocking the same channels in the tips of the nerve fiber, thereby improving the function of surviving tissue in the injured nervous system. Fampridine-SR is a sustained release formulation of fampridine that we believe enables safer and more effective blood levels to be maintained throughout the day, which cannot be easily accomplished with an immediate-release formulation.

We have a worldwide, exclusive license from Elan for all of its rights to, among other things, develop, promote, distribute, use and sell Fampridine-SR in all human clinical indications, and to develop, promote, distribute, use and sell other patented sustained-release formulations of the drug. Elan also manufactures Fampridine-SR for us.

We believe there are compelling reasons to develop Fampridine-SR as a new therapy for improving walking ability in people with MS:

- Most people with MS experience a decline in their ability to walk, which is one of the most limiting aspects of the disease.
- Our Phase 2 clinical trials of Fampridine-SR in MS patients have shown improvement in walking ability and leg strength.
- There are no current therapies that improve walking ability or leg strength in people with MS.

### *Clinical Trials of Fampridine-SR*

We have conducted a series of clinical trials to establish the safety, pharmacokinetics and optimal dosing of Fampridine-SR in MS and SCI, as well as to assess its efficacy. More than 800 people have been treated with Fampridine-SR in over 25 clinical trials, including nine clinical trials in MS and 11 clinical trials in SCI.

### Clinical Trials in Multiple Sclerosis

*Current Phase 3 Trial.* Our current Phase 3 clinical trial, MS-F203, was initiated in June 2005, after we reached agreement with the FDA on the protocol design and received a Special Protocol Assessment from the FDA Division of Neuropharmacological Drug Products. The FDA has agreed that this trial, if successful, could qualify as one of the pivotal efficacy studies required for drug approval.

MS-F203 is a double-blind clinical trial designed to enroll 240 people at up to 35 MS centers in the United States and Canada. Subjects will complete a Timed 25-Foot Walking Test at each visit during the clinical trial. This test involves timing the subject's completion of a 25-foot walk as fast as he or she can do so safely. Such a test is relevant as a measure of the subject's ability to perform tasks that are required in daily life, such as crossing the street in the time period allotted by a traffic light. In addition, subjects will also be asked to fill out a 12-item questionnaire known as the MS Walking Scale or MSWS-12. The MSWS-12 is a subjective measure of the degree to which walking disability impacts the subject's daily life.

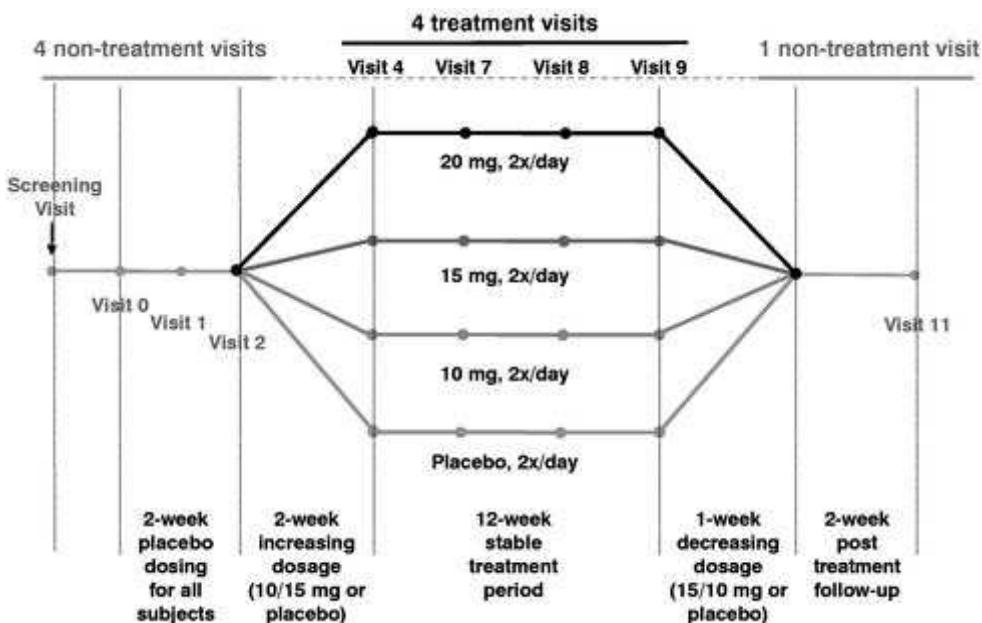
Trial results will be analyzed using our proprietary responder analysis, for which we have applied for a patent. A subject will be deemed to be a responder if his or her score on the 25-foot walk was better during the majority of his or her visits in the treatment phase of the trial, than the best visit during the non-treatment phase. The primary endpoint of the trial will be the comparison of the percentage of responders in the Fampridine-SR group to the percentage of responders in the placebo group. To validate the clinical importance of improvements in the timed walk measurements, the MSWS-12 scores of the responders will be compared against those of non-responders. This analysis is designed to ensure that being deemed a responder is clinically meaningful to the subject. In addition, the trial will also test for significant improvement in walking ability in the Fampridine-SR-treated responder group at the last treatment visit versus the placebo group. This analysis is designed to ensure that the improvements seen by responders are maintained over the duration of the trial. As a secondary endpoint, the trial will also measure lower extremity muscle strength, as assessed by the modified British Medical Research Council manual muscle testing procedures, referred to as the Lower Extremity Manual Muscle Test or LEMMT.

The design of our Phase 3 clinical trial was closely modeled on the design of the preceding Phase 2 clinical trial, MS-F202, and builds on our clinical trial experience in measuring improvements in neurological function against the variability in function that is inherent in people with MS. Individuals who suffer from MS vary in the severity of the impairments they experience on a day-to-day basis, depending on the activity of the disease on a given day. As a result, from one clinical trial visit to the next, a subject's walking ability can vary significantly. This variability makes it difficult to distinguish treatment-related changes in walking ability from disease-related changes in walking ability. Our review of MS-F202 data demonstrated that a responder form of analysis helps overcome the effect of the inherent variability of disease activity that people with MS experience.

We expect the recruitment period for the current trial, which began in June 2005, to require approximately six to eight months. The treatment period is 14 weeks and each subject is involved in trial procedures for approximately five months overall. We currently expect to be able to evaluate data from this clinical trial in the third quarter of 2006, if patient recruitment proceeds as planned.

*Phase 2 Clinical Trials.* Our most recently completed Phase 2 clinical trial, MS-F202, was designed to compare 10 mg, 15 mg and 20 mg doses of Fampridine-SR taken twice per day and to assess their relative safety and efficacy over a stable treatment period of 12 weeks. The pre-specified primary endpoint of the clinical trial was an improvement in average walking speed using the Timed 25-Foot Walk. The clinical trial was initiated in early 2003 and completed enrollment of 211 subjects in 24 major MS centers in August 2003. The clinical trial was designed to give us a clear indication of optimal dose and the number of subjects that we would need to establish efficacy in a subsequent Phase 3 trial. The overall design of our MS-F202 Phase 2 clinical trial is illustrated in Figure 2 below.

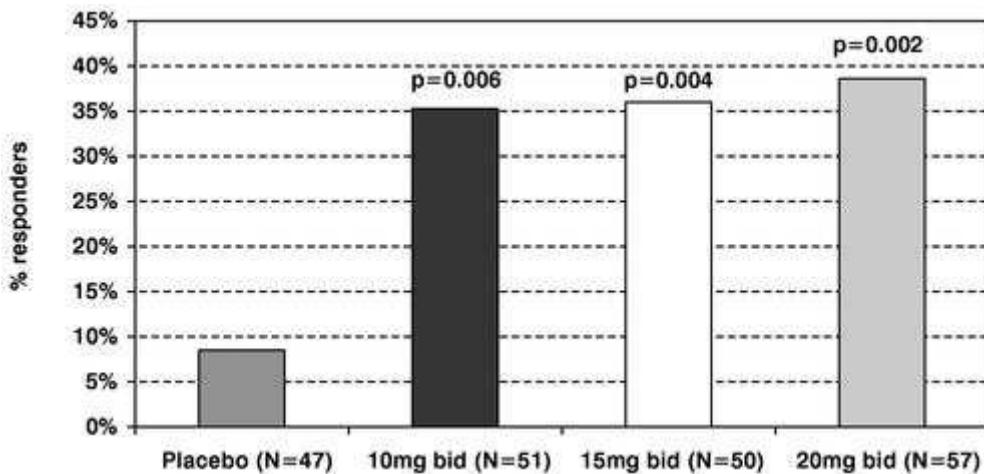
**Figure 2. Design of Fampridine-SR MS-F202 Phase 2 clinical trial.**



The efficacy results, based on the prospective analysis plan of MS-F202, indicated a trend for improvement from baseline in walking ability (using the Timed 25-Foot Walk test) in the Fampridine-SR-treated subjects, relative to the placebo-treated subjects. Statistical significance was not reached on the primary efficacy analysis, which was defined as the percentage change from baseline in average walking speed during the 12 weeks of stable double-blind treatment. Statistical significance was obtained for the secondary outcome measure of lower extremity muscle strength, as assessed by LEMMT. All three Fampridine-SR dose groups showed greater mean increases from baseline in LEMMT scores relative to the placebo group and the differences were statistically significant for the 10 mg and 15 mg Fampridine-SR groups ( $p < 0.05$ ). A p-value is a statistical term that indicates the probability that a difference between treatment groups is random. The smaller the p-value, the lower the likelihood that the difference was random. Generally a p-value of less than 0.05 is considered to represent a statistically significant difference.

Our analysis of the data led us to believe that part of the reason that statistical significance was not achieved on the primary endpoint was related to the disease-related variability of walking ability for a subject from visit to visit, together with the fact that not all subjects are expected to respond to the treatment. We believe this variability in walking ability, much of which is contributed by subjects who do not respond, made it difficult to establish the significance of treatment-related improvements using the average walking speed measure that had been prospectively defined as the endpoint of the trial. In order to try to reduce the effect of this variability, we developed an analysis designed to classify subjects as responders only if they demonstrated consistent improvement during the treatment period, when subjects were taking either Fampridine-SR or placebo. Subjects were deemed to be responders if their Timed 25-Foot Walk test results were better during at least three of the four treatment visits than their best score during the non-treatment period. When examined using this form of analysis, all three of the groups receiving Fampridine-SR had a statistically significant increase in the number of responders compared to placebo, as shown in Figure 3.

**Figure 3. Responder rates for treatment groups in MS-F202.**

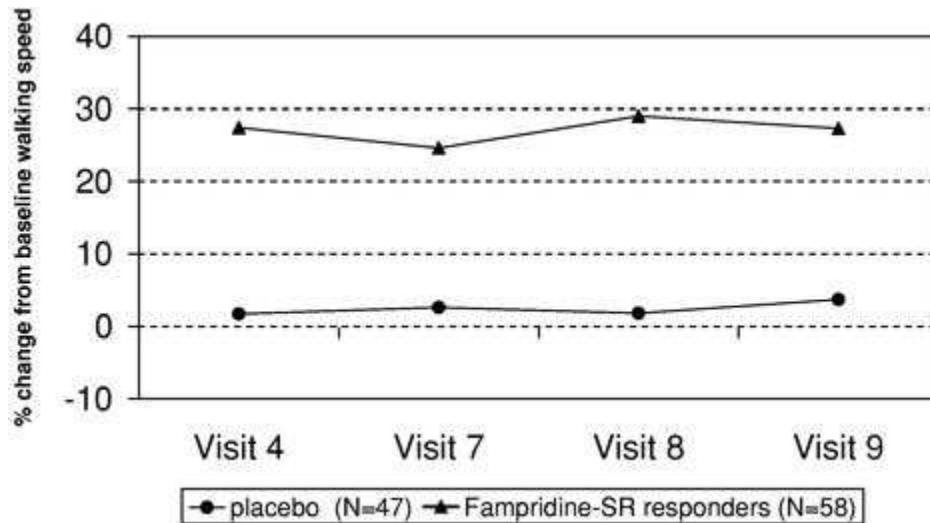


Since the differences in responder rates among the three doses examined were small, more detailed analyses were performed comparing the pooled Fampridine-SR-treated groups against the placebo-treated group. The difference in responder rate between the pooled Fampridine-SR-treated subjects and the placebo-treated subjects was statistically significant ( $p$ -value<0.001), as shown below.

Status	Placebo	Fampridine-SR Pooled
	(N=47)	(N=158)
Responders	8.5%	36.7%
Non-responders	91.5%	63.3%

The responder analysis allows characteristics of the response to be appreciated in more detail. The improvement in walking in responders appeared to be substantial and sustained. The average increase in walking speed of responders was more than 25%, as compared to approximately 2% for non-responders. This was consistent over the 3-month period of treatment and was statistically significant at every visit, as shown in Figure 4.

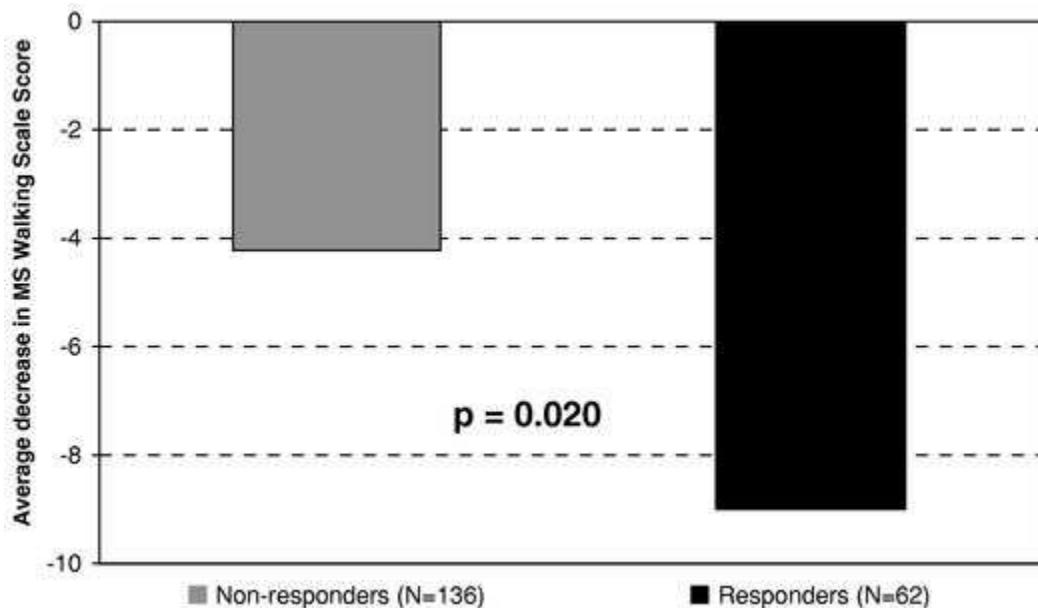
**Figure 4. The average percent change from baseline in walking speed.**



The graph depicts the average change in walking speed during the treatment period for study MS-F202, comparing Fampridine-SR-treated responders to the placebo-treated group. Differences between the groups were statistically significant ( $p$ <0.001) at all visits.

In MS-F202, subjects were required to fill out the MSWS-12 questionnaire. When the results of this questionnaire were analyzed for all evaluable subjects, the average improvement, or reduction in score, during the treatment period was greater for responders than for non-responders, in each case including those subjects on placebo, and the difference was statistically significant. We believe this result demonstrates that being a timed-walk responder is clinically meaningful to patients. These results are shown in Figure 5.

**Figure 5. Average change in MS Walking Scale Score.**



*Histogram to show the average change in score for the MS Walking Scale for responders and non-responders between the baseline and stable treatment periods. A reduction in score represents a subject's perception that there has been improvement in the effect of walking disability on activities of daily life.*

This analysis of the MS-F202 clinical trial served as the basis for the design of the Phase 3 MS-F203 clinical trial. The results of MS-F202 using this analysis showed that there was a statistically significant increase in the number of people being treated who experienced a consistent increase in walking ability, compared to placebo, and that this improvement was sustained and clinically meaningful to patients. These data also show that the benefit was maintained for the full 14 weeks of treatment. These results are similar whether the pooled Fampridine-SR-treated subjects or just those subjects receiving the current target dose of 10 mg twice a day are compared with the placebo-treated group.

In 2001, we completed a smaller double-blind Phase 2 clinical trial of Fampridine-SR, MS-F201. This clinical trial was designed to determine the optimal dose range of Fampridine-SR and to evaluate possible ways in which to measure the effect of the drug on symptoms of the disease, including motor strength, timed walking and self-reported fatigue. The clinical trial involved a total of 36 MS subjects in four major academic MS research centers. A total of 25 subjects received Fampridine-SR in doses increasing from 10 mg to 40 mg twice per day during seven weeks of treatment and 11 subjects were given placebo during the same period. This treatment period was preceded by a series of baseline evaluations during the course of four weeks to allow the subjects to become adjusted to the clinic visits and allow the various measurements to stabilize. A one-week blinded treatment with placebo tablets preceded the first drug administration to look for potential placebo effects on the various outcome measures.

The clinical trial demonstrated that doses up to 25 mg twice a day were well tolerated and were associated with statistically significant improvements in walking ability and leg muscle strength. All the improvement in strength and walking ability was apparent within these first four weeks of the

treatment, at doses from 10 mg to 25 mg twice a day. The placebo-treated subjects showed some tendency to improve or worsen in walking ability, mostly within 20% of their baseline average. However, the Fampridine-SR-treated group showed a marked tendency for improvement in walking speed, with 9 of 25 subjects improving more than 20% from baseline and two with greater than 50% improvement. These findings were consistent with the results of an earlier, small, crossover study sponsored by Elan, using doses of 17.5 mg twice a day for one week, which was published in the journal *Neurology* in 1997.

We re-examined the data from the MS-F201 clinical trial using an equivalent responder analysis in which we defined a responder as a subject who showed walking ability on the 25-Foot Walk that was faster in a majority of treatment visits than the fastest speed recorded during the non-treatment period. In MS-F201, this meant that four or more of the seven treatment visits had to show faster walking than the visits during the non-treatment period. We found that the responder rates in this trial were 40% (10 of 25) for the Fampridine-SR-treated subjects and 9.1% (1 of 11) for the placebo-treated subjects. Hence, the response rate by this measurement was similar to that seen in the MS-F202 clinical trial. We did not incorporate the MSWS-12 measure in the MS-F201 clinical trial.

#### Clinical Trials in Spinal Cord Injury

Recent clinical research using imaging and post-mortem studies has shown that the majority of people with SCI do not have severed spinal cords and maintain some nerve fibers that cross the site of injury. However, these surviving nerve fibers are often damaged and lose their myelin sheath. A series of preclinical studies and clinical trials have indicated that fampridine can potentially improve conduction in nerve fibers injured by spinal cord injury and improve function in people with spinal cord injury.

*Phase 3 Clinical Trials.* In March 2004, we released results from two Phase 3 double-blind clinical trials of Fampridine-SR in people with SCI. The trials did not reach statistical significance in their primary endpoints, which were reduction of spasticity, as measured by the Ashworth scale, and improvement of patients' Subject Global Impression, or SGI. The Ashworth scale is a validated, 5-point clinician assessment of an individual's spasticity. The SGI is a seven-point scale in which trial participants rate how they feel about the overall effect of the trial drug. In one of the SCI trials, the data showed a positive trend ( $p=0.069$ ) toward improvement on the Ashworth scale when analyzed across all observations during the double-blind trial treatment period, which was the trial's pre-specified plan of analysis. When analyzed based on the subjects' last observation carried forward, a commonly used method of analysis, the improvement in, or reduction of, Ashworth score in that trial was statistically significant ( $p=0.006$ ). The drug groups in both trials showed a progressive mean improvement on the Ashworth score during the double-blind treatment period. However, the placebo group in one of the trials showed a more pronounced reduction in Ashworth Score than expected.

The design of these Phase 3 clinical trials was based on a series of earlier Phase 2 clinical trials in which the most consistent finding was a greater reduction in spasticity in Fampridine-SR-treated subjects relative to placebo-treated subjects, as measured by the Ashworth Score. Other benefits observed in the Phase 2 trials were improved motor, bowel, bladder and sexual function. Unlike the design of our Phase 3 clinical trials, our Phase 2 clinical trials did not require a minimum spasticity level for enrollment and the treatment period was from one to four weeks rather than 14 weeks. These changes were made in the Phase 3 trials because the FDA required minimum twelve week duration of treatment for approval of a long-term therapy of this kind and because adequate measurement of benefit required a certain degree of spasticity at baseline.

Based on the entire body of data in clinical trials of fampridine in people with SCI and the new approaches to evaluating response to the drug that we have learned in MS trials, we expect to resume

development of Fampridine-SR for SCI after we have completed further development of the drug for MS.

#### Safety Profile of Fampridine-SR

To date, Fampridine-SR has been tested in over 800 subjects. The adverse events most commonly experienced in all double blind, placebo-controlled Phase 2 and Phase 3 studies were insomnia, numbness or tingling in the extremities, dizziness and nausea. These events were generally mild to moderate and are believed to have been dose-related. Seizures have also been observed in some prior trials of Fampridine-SR with higher doses of the drug. No seizures have been reported to date in patients with the dose that we have selected for our Phase 3 clinical trial. We are carefully monitoring the potential for seizure as a side effect, including the possibility of interaction with other drugs that are known to lower the threshold for seizure in susceptible subjects. We are also aware that people with MS are reported to have a higher incidence of seizures than the unaffected population. We have excluded from these trials subjects at known risk for seizures because of previous experience or abnormal electroencephalogram indicative of such risk.

As part of our continuing evaluation of safety, we have established extension studies that allow subjects in earlier clinical trials to receive Fampridine-SR on an unblinded, or open-label basis, with their progress followed for at least a year and the potential for continuing treatment until the drug is approved. By their open-label design, these studies will allow us to gain some additional knowledge of the longer term efficacy and safety of the drug, albeit limited by the lack of a placebo control group. These studies are intended primarily to gain sufficient subject experience to satisfy the regulatory guidelines for long-term and overall safety assessments. As of September 2005, approximately 176 subjects from MS-F202 have been enrolled in an extension trial and 37 remain active in the trial, with approximately 42 subjects who have taken the drug for over a year. A new extension study for subjects of the current Phase 3 clinical trial is expected to enroll a majority of the MS-F203 trial subjects, beginning in the fourth quarter of 2005.

Only limited data are yet available from these ongoing safety studies, since no interim analysis of the data is planned, but there have been two incidences of seizures in subjects enrolled in the MS-F202 extension. These seizures occurred in subjects who had been taking the drug at a dose of 15 mg twice a day for six months and five months respectively, before the adverse event. The protocol has now been amended to restrict doses to 10 mg twice a day in order to gather more safety data at the dose that we are examining in the current Phase 3 trial and for which we intend to seek approval. To date, we have had no report of seizure at the 10 mg twice a day dose.

#### ***Other Research and Development Programs***

##### ***Chondroitinase Program***

We have developed a program based on the concept of breaking down the matrix of scar tissue that develops as a result of an injury to the CNS. Published research has demonstrated that this scar matrix is partly responsible for limiting the regeneration of nerve fibers in the CNS and restricting their ability to modify existing neural connections, which is the process known as plasticity. This scar matrix may also inhibit repair of the myelin sheath by restricting the movements of the myelinating cells into the area of damage.

Major components of the scar matrix, known as proteoglycans, consist of a combination of protein and sugar molecules. Chondroitin sulfate proteoglycans, or CSPGs, are the specific types of proteoglycans found in the scar matrix. Cell culture studies and a number of animal studies have shown that these CSPGs inhibit the growth of nerve fibers and are likely to be key factors in the failure of the spinal cord or brain to regenerate and repair. Studies also have shown that bacterial enzymes produced

by the body called chondroitinases break down the CSPG molecules, thereby reducing their inhibitory activity.

Four independent laboratories have published animal studies showing that application of chondroitinase results in recovery of function following injuries to various areas of the brain or spinal cord. These functions have included walking, forelimb grasping, sensation, and visual and bladder function. We have produced a recombinant version of naturally-occurring Chondroitinase ABC-I and successfully tested its ability to improve function in an animal model of spinal cord injury. These studies were recently published in the Journal of Neurotrauma. In these studies, rats that sustained a spinal cord injury were treated with either chondroitinase or an ineffective enzyme control and evaluated over 10 weeks of recovery. Animals treated with chondroitinase showed significant improvements both in motor function of the limbs and in bladder function, compared to those treated with the control enzyme.

We are conducting a research program, which has been funded in part by federal and state grants, to develop second generation approaches to overcoming the proteoglycan matrix. These include novel enzyme molecules and alternative approaches to blocking matrix formation. We are now exploring research grants from the NIH and potential partnerships with other companies for completing our preclinical program in chondroitinase. In 2003, we obtained an exclusive worldwide license to certain patents and technology from Cambridge University Technical Services Limited and King's College London related to our chondroitinase program. We are also building our intellectual property position with respect to this technology with patent applications around uses of the known compound and new chemical structures.

### ***Remyelination Programs***

Our remyelination programs include two distinct therapeutic approaches to stimulate repair of the damaged myelin sheath in MS, Glial Growth Factor 2, or GGF-2, and remyelinating antibodies. These two approaches address remyelination by different and potentially complementary routes. Both programs require finalizing production of clinical-grade material and completion of preclinical toxicology tests before moving into clinical development. We believe a therapy that could permanently repair myelin sheaths has the potential to restore substantial neurological function to those affected by demyelinating conditions.

#### **Neuregulins/GGF-2**

GGF-2 is a member of the neuregulin family of growth factors related to epidermal growth factor. The neuregulins bind to erbB receptors, which translate the growth factor signal to the cell and cause changes in cell growth, protein production and gene expression. The molecule was shown in published studies to stimulate remyelination in animal models of MS and to have a range of other effects in neural protection and repair. In 2002, we obtained from CeNeS an exclusive worldwide license to its neuregulin patents and related technology, including GGF-2. We initially plan to develop GGF-2 for the treatment of MS.

Neuregulins covered in the portfolio from CeNeS have additional potential applications in treatment of heart disease and cancer. Neuregulins and their erbB receptors are essential for cardiac development and have been shown to protect cardiac muscle cells from stressors that model congestive heart failure and myocardial infarction. Additionally, GGF-2 has been shown to protect the heart and brain from the toxicity of commonly used chemotherapeutic agents, such as cisplatin. The neuregulins may also have the potential, when coupled with toxins, to target erbB receptor positive tumors such as those found in certain types of breast cancers.

## Remyelinating Antibodies Program

Our remyelinating antibodies program is based on more than 15 years of research performed at Mayo Clinic. Under a license agreement entered into with Mayo Clinic in September 2000, we have exclusive worldwide rights to patents and other intellectual property for these antibodies related to use and treatment of CNS disorders. Studies have demonstrated the ability of this family of antibodies to stimulate repair of the myelin sheath in three different animal models of MS. In particular, these antibodies were found to react with molecules on the surface of the cells that make the myelin sheath and stimulate them in a number of ways, leading to increased remyelination activity. First identified in mice, similar antibodies were subsequently identified in human blood samples by the Mayo team and we have been able to produce a recombinant human antibody that may be suitable for clinical development.

We have also supported preclinical studies at Mayo Clinic to learn more about the ways the antibodies act to stimulate the myelin sheath-forming cells. In 2004, Mayo Clinic received a \$2 million grant to develop and manufacture clinical-grade material and progress the program towards clinical development.

## **Sales and Marketing**

We have established three sales channels for marketing Zanaflex Capsules: an internal specialty sales force, a contract sales force and a telemarketing group.

- *Internal Specialty Sales Force.* We currently employ a team of 14 highly experienced sales professionals to call on neurologists and other prescribers who specialize in treating people with conditions that involve spasticity. Members of this sales force also call on managed care organizations, pharmacists and wholesale drug distribution customers. Our sales professionals have had an average of 15 years of sales experience prior to joining us.
- *Contract Sales Force for Primary Care Physicians.* Cardinal Health provides approximately 160 sales representatives who market Zanaflex Capsules to primary care physicians who prescribe Zanaflex tablets or generic tizanidine tablets. Cardinal Health's compensation is based upon the achievement of specific sales targets.
- *Contract Pharmaceutical Telesales Organization.* We have retained Access Worldwide Communications to provide a small, dedicated sales force of telesales professionals to contact primary care and specialty physicians to provide information regarding Zanaflex Capsules and determine their interest in receiving samples of Zanaflex Capsules or a visit from one of our sales representatives. To date, over 90% of prescribers contacted have requested samples and over 50% have requested a visit from one of our sales representatives.

We focus our sales and marketing efforts on physicians and other prescribers who treat spasticity in the United States. Approximately 9,200 physicians generated roughly 78% of the prescriptions for Zanaflex and generic tizanidine tablets in the United States in 2004. Most of these physicians are located at major medical centers. We have existing relationships with the majority of these centers through our Fampridine-SR clinical trial process.

We believe that, in general, people with MS and SCI are knowledgeable about their conditions, actively seek new treatments, and directly influence their prescriber's evaluation of treatment options. We have existing relationships with the major advocacy groups that focus on MS and SCI. We provide regular updates regarding our development programs and we sponsor or support several educational initiatives. We have implemented a comprehensive series of educational and promotional programs to support Zanaflex Capsules. These include educational materials, a peer-to-peer speakers' program, samples, medical information and drug safety monitoring services, as well as a patient assistance program. At the request of the FDA, we have also implemented an educational program to inform

pharmacists, prescribers and patients that Zanaflex tablets or generic tizanidine tablets are not therapeutically equivalent to Zanaflex Capsules and that, as a result, a prescription for Zanaflex Capsules should not be substituted with any tablet formulations at the pharmacy.

We believe that the expertise we are developing through commercializing Zanaflex Capsules will provide a strong foundation for our marketing of Fampridine-SR, if approved, as well as for additional potential treatments in CNS conditions. As a result, we plan to market Fampridine-SR ourselves in the United States and possibly in Canada, if it is approved in both countries. We expect that the sales force for Zanaflex Capsules would also promote Fampridine-SR in the United States since both products would have many of the same prescribers. We do not currently intend to build commercial capabilities outside North America but intend to secure those capabilities through one or more partners.

Similar to other pharmaceutical companies, our principal customers are wholesale pharmaceutical distributors. We currently depend on three key customers. For the six months ended June 30, 2005, Cardinal Health, McKesson Corporation and AmerisourceBergen Corporation accounted for approximately 52.6%, 27.3% and 12.1% of our revenues, respectively.

## **Scientific and Medical Network**

We have an established advisory team and network of well-recognized scientists, clinicians and opinion leaders in the fields of MS and SCI. Depending on their expertise, these advisors provide assistance in trial design, conduct clinical trials, keep us apprised of the latest scientific advances and help us identify and evaluate business development opportunities. A number of the members of this network form our Scientific Advisory Board. The members of our Scientific Advisory Board are highlighted below:

Name	Affiliation
Michael S. Beattie, Ph.D.	Brumbaugh Professor and Chair of the Department of Neuroscience, Ohio State University.
Jacqueline C. Bresnahan, Ph.D.	Professor of Neuroscience, Ohio State University.
Mary B. Bunge, Ph.D.	Professor of Cell Biology and Anatomy, Neurological Surgery and Neurology, University of Miami School of Medicine.
Carl W. Cotman, Ph.D.	Professor of Psychobiology and Neurology, University of California, Irvine.
James W. Fawcett, Ph.D.	Merck Company Professor of Experimental Neurology, Cambridge University, and Chairman of the MRC Cambridge Centre for Brain Repair.
Martin Grumet, Ph.D.	Professor of Cell Biology and Neuroscience, Rutgers University Director, W. M. Keck Center for Collaborative Neuroscience.
Eugene Johnson, Jr., Ph.D.	Norman J. Stupp Professor of Neurology, and Professor of Molecular Biology and Pharmacology at Washington University School of Medicine, St. Louis.
Mark D. Noble, Ph.D.	Professor of Genetics at the Center for Cancer Biology, University of Rochester Medical Center.
Melitta Schachner, Ph.D.	Professor and Director of the Institute for Synthesis of Neural Structures, University of Hamburg, Germany.
Jerry Silver, Ph.D.	Professor of Neurosciences, Case Western Reserve University.

Patrick A. Tresco, Ph.D.	Professor of Bioengineering, Director Keck Center for Bioengineering, University of Utah.
Mark H. Tuszynski, M.D., Ph.D.	Professor of Neurosciences, Director of the Center for Neural Repair, and Attending Neurologist at the University of California, San Diego.
Stephen G. Waxman, M.D., Ph.D.	Chairman of the Department of Neurology, Yale University School of Medicine.
Wise Young, Ph.D., M.D.	Professor II and Director of the W. M. Keck Center for Collaborative Neuroscience, Rutgers University.

In addition, we have recruited over 35 MS centers and 80 SCI rehabilitation centers in the United States and Canada to conduct our clinical trials. Our clinical management team has extensive experience in the areas of MS and SCI and works closely with this network.

### **Collaborations, Alliances and License Agreements**

#### ***Elan Corporation plc***

##### **Zanaflex**

In July 2004, we entered into an Asset Purchase Agreement with Elan pursuant to which we acquired all of Elan's research, development, distribution, sales and marketing rights to Zanaflex Capsules and Zanaflex tablets in the United States. The assets acquired include the products' FDA registrations and FDA dossiers, proprietary product know-how, a patent and two related patent applications, certain inventory of Zanaflex tablets and certain product books and records. Elan has granted us a license that allows us to use the Zanaflex trademarks in the United States and has given us the right to buy the Zanaflex trademark for a nominal sum once specified milestone and royalty payments have been made. Elan also granted us an exclusive, perpetual and royalty-free license to certain intellectual property relating to technology contained in Zanaflex Capsules and Zanaflex tablets or used in the manufacture of Zanaflex Capsules, for use in connection with the sale and marketing of Zanaflex Capsules and Zanaflex tablets in the United States. We also acquired the right to develop new indications, formulations, dosage forms, delivery systems and process improvements of Zanaflex. Under the agreement, Elan agreed not to directly or indirectly market, distribute or sell any products containing tizanidine as an active pharmaceutical ingredient in the United States until the later of the end of our obligation to pay royalties to Elan or valid termination of our supply agreement with Elan. In addition, we agreed not to directly or indirectly market, distribute or sell any products containing tizanidine as its active pharmaceutical ingredient in the United Kingdom or Ireland until July 2007.

Our agreement with Elan obligates us to pay a combination of sales-based milestone payments and royalties on future sales of Zanaflex Capsules and Zanaflex tablets. Our obligation to pay royalties to Elan for Zanaflex tablets and Zanaflex Capsules ends on the later of July 2014 or when the last patent included in the acquisition expires. We also agreed to use commercially reasonable efforts to commercialize Zanaflex Capsules.

As part of the acquisition, we assumed certain of Elan's rights and obligations relating to Zanaflex under a license agreement with Novartis, to the extent that these rights and obligations arise subsequent to our acquisition of Zanaflex. Under this agreement we obtained certain rights to market and sell tizanidine products and rights to product improvements developed by Novartis. We are obligated to pay Novartis royalties based on net sales of Zanaflex Capsules and Zanaflex tablets until the agreement expires in February 2007, after which time we will have a fully paid-up license from Novartis to these rights.

Elan and Novartis manufacture Zanaflex Capsules and tablets for us, respectively. See "—Manufacturing."

### **Fampridine-SR**

In January 1997, we licensed from Elan exclusive worldwide rights to Elan's sustained release formulation of fampridine, Fampridine-SR, for the treatment of SCI. In April 1998, we formed MS Research & Development Corporation, or MSRD, with Elan's subsidiary, Elan International Services, Ltd., or EIS, to develop Fampridine-SR for treatment of MS. At that time, MSRD licensed from Elan exclusive worldwide rights to Fampridine-SR for the treatment of MS.

In September 2003, we entered into a termination and assignment agreement with Elan, EIS and MSRD pursuant to which MSRD assigned to us its assets, including the license from Elan for Fampridine-SR for MS. We paid MSRD approximately \$11.5 million for all the assets and assumed liabilities of MSRD. MSRD distributed the purchase price to its shareholders according to their equity ownership interest. We received a distribution of approximately \$9.5 million as a result of this distribution. We also purchased EIS's shares at par value, and own approximately 88% of MSRD, which now has no assets or liabilities and is inactive.

In September 2003, we entered into an amended and restated license with Elan, which replaced the two prior licenses for Fampridine-SR in oral sustained release dosage form. Under this agreement, Elan granted us exclusive worldwide rights to Fampridine-SR for all indications, including SCI, MS and all other indications. We agreed to pay Elan milestone payments and royalties based on net sales of the product, if approved.

Elan is responsible for completing the chemistry, manufacturing and controls section of our NDA for Fampridine-SR and equivalent regulatory applications outside the United States. Elan is also supplying us with product for our clinical trials under this agreement.

Elan may terminate our license in countries in which we have a license, including the United States, if we fail to file regulatory approvals within a commercially reasonable time after completion and receipt of positive data from all preclinical and clinical studies required for the related NDA or any NDA equivalent. We could also lose our rights under the license agreement if we fail to launch a product in such countries within 180 days of NDA or equivalent approval or if we fail to fulfill our payment obligations under the license agreement. If Elan terminates our license in any applicable country, Elan is entitled to license from us our patent rights and know-how relating to the product and to market the product in the applicable country, subject to royalty payments to us.

Subject to early termination provisions, the Elan license terminates on a country by country basis on the last to occur of fifteen years from the date of the agreement, the expiration of the last to expire Elan patent or the existence of competition in that country.

### ***Cardinal Health PTS, LLC***

In August 2005, we entered into a sales force agreement with Cardinal Health. Under this agreement, approximately 160 of Cardinal Health's sales representatives market Zanaflex Capsules to approximately 4,000 high prescribing primary care physicians identified by us throughout the United States. Although these sales representatives do not exclusively represent Acorda, our agreement with Cardinal Health provides that they will not market any other products during their sales calls related to Zanaflex Capsules. We are responsible for providing training to the Cardinal Health sales representatives regarding the medical and technical aspects of Zanaflex Capsules and on our specific sales strategies and policies. We also provide all samples and promotional materials for use by these sales representatives. Cardinal Health is responsible for general supervision and management of the sales force, including ensuring legal and regulatory compliance, including maintaining procedures relating to the handling of drugs by their sales representatives in compliance with applicable laws and prudent management practices.

We have agreed to pay Cardinal Health service fees based on the achievement of targeted sales levels and to reimburse Cardinal Health for certain costs. The agreement has a term of two years and cannot be terminated without cause prior to December 31, 2005.

#### ***Rush-Presbyterian St. Luke's Medical Center***

In 1990, Elan licensed from Rush-Presbyterian St. Luke's Medical Center, or Rush, know-how relating to fampridine for the treatment of MS. We subsequently licensed this know-how from Elan. In September 2003, we entered into an agreement with Rush and Elan terminating the Rush license to Elan and providing for mutual releases. We also entered into a license agreement with Rush in which Rush granted us an exclusive worldwide license to its know-how relating to fampridine for the treatment of MS. Rush has also assigned to us its Orphan Drug Designation for fampridine for the relief of symptoms of MS.

We agreed to pay Rush a license fee, milestone payments and royalties based on net sales of the product for neurological indications. We also entered into an agreement with Elan relating to the allocation of payments between us and Elan of certain payments to Rush under the Rush license. Subject to early termination provisions, the Rush license terminates upon expiration of the royalty obligations, which expire fifteen years from the date of the agreement.

#### ***Canadian Spinal Research Organization***

In August 2003, we entered into an Amended and Restated License Agreement with the Canadian Spinal Research Organization, CSRO. Under this agreement we were granted an exclusive and worldwide license under certain patent assets and know-how of CSRO relating to the use of fampridine in the reduction of chronic pain and spasticity in a spinal cord injured subject.

We are required to pay to CSRO royalties based on a percentage of net sales of any product incorporating the licensed rights, including royalties on the sale of Fampridine-SR for any indication. Subject to early termination provisions, the CSRO agreement will expire upon the termination of all royalty or other payment obligations on a country-by-country basis, which will be no longer than the earlier of the expiration of the last to expire licensed patent in such country or ten years from the date of the first commercial sale of the product in such country.

#### ***Cornell Research Foundation, Inc.***

In February 2003, we entered into a license agreement with Cornell Research Foundation, Inc., pursuant to which we were granted an exclusive license under a patent for the use of fampridine in the treatment of anterior horn cell diseases. In consideration for the license, we paid Cornell an upfront license fee and are required to make payments to Cornell upon the achievement of certain milestones relating to the successful reissuance or reexamination of the patents licensed to us and, the completion of a clinical trial testing the use of Fampridine-SR in amyotrophic lateral sclerosis. We are also obligated to pay Cornell royalties on net sales of Fampridine-SR in any and all indications.

Under the Cornell agreement, Cornell is responsible for all patent prosecution and maintenance activities relating to the licensed patent, and we are responsible for paying all fees incurred by Cornell in connection therewith. We have the right under this agreement to enforce any patent rights within the licensed patents against infringement by third parties at our own expense. Subject to early termination by either of us, the term of the Cornell agreement will continue until the expiration of the last to expire valid claim under the licensed patent.

#### ***Cambridge University Technical Services Limited and King's College London***

In December 2003, we entered into a license agreement with Cambridge University Technical Services Limited and King's College London, pursuant to which we were granted an exclusive worldwide license, including the right to sublicense, under a U.S. patent application and its foreign

counterpart to develop and commercialize products related to enzymatic methods, including chondroitinase, of treating CNS disorders. We were also granted a non-exclusive worldwide license, including the right to sublicense, under the same U.S. and foreign patent applications to develop and commercialize products related to small molecule inhibitors for use in treating CNS disorders.

In consideration for these licenses, we paid an upfront license fee and are required to pay royalties on net sales and on any sublicense royalties that we receive. Subject to early termination provisions, the King's College license agreement will continue until the expiration of the last to expire valid claim under the licensed patent applications, at which time the licenses granted under the license agreement will automatically become non-exclusive, worldwide, fully paid-up and irrevocable.

#### ***Mayo Foundation for Medical Education and Research***

In September 2000, we entered into a license agreement with Mayo Foundation for Education and Research, or Mayo Clinic, pursuant to which we were granted an exclusive worldwide license to its patents and other intellectual property on remyelinating antibodies. Under this agreement, we have the right to develop, make, use and sell the remyelinating antibody products for the prevention, mitigation and treatment of CNS disorders. We have worked closely with one of Mayo Clinic's research groups on developing and patenting this emerging technology in connection with the therapeutic use of these antibodies, specifically myelination and remyelination in MS and SCI. Mayo Clinic has the right to continue researching the antibodies and, in the event it develops other applications related to the licensed patent, which are outside of the scope of our current license, but are for the treatment of CNS disorders. Mayo Clinic is required to offer rights in these new applications to us before it offers such rights to a third party.

Under the Mayo Clinic agreement, we are obligated to make milestone payments and pay royalties based on net sales. This license agreement will terminate upon the expiration of the last licensed patent in any such licensed product.

We have also supported preclinical studies at Mayo Clinic to learn more about the ways the antibodies act to stimulate the myelin sheath-forming cells. In 2004, Mayo Clinic received a \$2 million grant to develop and manufacture clinical-grade material and progress the program towards clinical development. A subsequent letter agreement between Mayo Clinic and us acknowledges that the work under this grant is being performed subject to and pursuant to the Mayo Clinic agreement.

#### ***CeNeS Pharmaceuticals plc***

In November 2002, we entered into two license agreements with CeNeS Pharmaceuticals plc. The first agreement relates to an exclusive worldwide sublicense under certain patents, patent applications and know-how to make, have made, use, import, offer for sale and sell protein products composed of GGF-2 and non-protein products developed through the use of material covered by a valid claim in the patents. The license to these patents and the right to sub-license these patents were granted to CeNeS by the Ludwig Institute for Cancer Research.

Our payment obligations to CeNeS include payment of an upfront license fee, royalties based on annual net sales of the product, if any, as well as payments upon achieving certain milestones in connection with the development, testing and regulatory approval of any protein products. We are obligated to make minimum royalty payments commencing on the third calendar year following the first commercial sale of any licensed product. If we fail to pay any minimum royalty, CeNeS will have the option to convert our license or any sublicense to a non-exclusive license. This agreement with CeNeS is effective until the later of November 12, 2017 or the expiration of the last-to-expire valid claim in the licensed patents.

The second agreement relates to an exclusive worldwide sublicense to us under certain patents, patent applications and know-how to make and have made, use and have used, sell, offer for sale, have sold and import protein products composed of one or more proteins encoded by the growth factor gene

nrg-2 and non-protein products developed through the use of material covered by a valid claim of the patents. The license to this patent and the right to sub-license this patent was granted to CeNeS by the President and Fellows of Harvard College.

We have agreed to a timeline to achieve certain milestones relating to the research and development and the clinical testing and filing of regulatory approvals for the products. We are also required to make milestone payments. If we are unable to meet a milestone, CeNeS has agreed to negotiate in good faith with us to agree for a reasonable extension of the time to achieve the milestone up to one year. We are obligated to pay CeNeS a license fee and royalties based on a percentage of net sales of protein products and non-protein products covered under the agreement.

Subject to early termination provisions, this agreement remains effective until the last patent, patent application or claim included in the licensed patents has expired, been abandoned or been held finally rejected or invalid.

### ***Teva Pharmaceuticals Industries Ltd.***

In September 2003, we entered into a collaboration agreement with Teva Pharmaceuticals Industries Ltd. ("Teva") under which we were granted a co-exclusive license with Teva to jointly develop and promote in the United States products containing valrocemide.

We made an initial payment to Teva of \$2 million that was charged as research and development expenses for the year ended December 31, 2003, upon execution of the collaboration agreement, and were obligated to make payments to Teva relating to the development of valrocemide.

We and Teva amicably terminated the collaboration agreement as of June 27, 2005 and in connection with the termination we paid Teva approximately \$3.1 million. We and Teva have no further obligations to each other under the collaboration agreement.

### **Manufacturing**

#### ***Zanaflex***

We currently rely on Elan, Novartis and other third parties to supply us with Zanaflex Capsules and Zanaflex tablets. Zanaflex Capsules are manufactured using Elan's proprietary SODAS (spheroidal oral drug absorption system) multiparticulate drug delivery technology. We agreed to provide Elan with monthly written 18-month forecasts, and with annual written two-year forecasts, of our supply requirements for Zanaflex Capsules. In each of the five months following the submission of our 18-month forecast we are obligated to purchase the quantity specified in the forecast, even if our actual requirements are greater or less. Elan is not obligated to supply products in excess of our forecast requirements, but will use commercially reasonable efforts to fulfill any such orders. The initial term of the agreement expires in 2009, with two automatic two-year renewal terms. Either party may terminate the agreement by notifying the other party at least 12 months prior to the expiration of the initial term or any renewal term. In addition, either party may terminate the agreement if the other party commits a material breach that remains uncured. If a failure to supply occurs under the agreement, other than a force majeure event, or if we terminate the supply agreement for cause, Elan must use commercially reasonable efforts to assist us in transferring production of Zanaflex Capsules to us or a third-party manufacturer, provided that such third party is not a technological competitor of Elan. If we need to transfer production, Elan has agreed to grant us a royalty-free, fully paid-up license of its manufacturing know-how and other information and rights related to the production of Zanaflex Capsules, including a license to use its SODAS technology for specified purposes. We have the right to sublicense this know-how to a third party manufacturer, provided that this third party is not a technological competitor of Elan. In the event of termination of the supply agreement due to a force majeure event that continues for more than three months, Elan has agreed to enter into negotiations with us to preserve the continuity of supply of products, including the possibility of transferring

manufacturing of Zanaflex Capsules to us or a third party manufacturer. Elan obtains tizanidine, the active ingredient in Zanaflex Capsules, from Novartis.

We currently rely on Novartis for our supply of Zanaflex tablets and tizanidine, the API in both Zanaflex Capsules and Zanaflex tablets. Under a supply agreement we assumed from Elan, Novartis is responsible for manufacturing Zanaflex tablets and tizanidine for us through February 2007. This includes the tizanidine that Elan uses to manufacture Zanaflex Capsules for us. Novartis currently produces tizanidine, but has arranged with other parties to formulate tablets and bottle and package the final product. Novartis has informed us that it intends to discontinue tizanidine production by the end of 2005. It is our understanding that Novartis is currently in the process of qualifying an alternative tizanidine manufacturer. We have established relationships with the companies that currently formulate, bottle and package the tablets, however, we do not have an agreement with an alternative tizanidine manufacturer. Although it is our understanding that Novartis is currently qualifying an alternative tizanidine manufacturer, after the expiration of our contract with Novartis in 2007, we will need to have a direct relationship with an alternative supplier of tizanidine.

#### ***Fampridine-SR***

In September 2003, we entered into an agreement with Elan for the supply of Fampridine-SR. Under that agreement, we are required to purchase at least 75% of our annual requirements of Fampridine-SR from Elan unless Elan is unable or unwilling to meet our requirements. In addition, the agreement also obligates us to make compensatory payments if we do not purchase 100% of our requirements from Elan.

As permitted by our agreement with Elan, we have designated Patheon, Inc. as a qualified second manufacturing source of Fampridine-SR. In connection with that designation, Elan assisted us in transferring manufacturing technology to Patheon. We and Elan have agreed that we may purchase up to 25% of our annual requirements from Patheon without making compensatory payments to Elan. In addition, Patheon may supply us with Fampridine-SR if Elan is unable or unwilling to meet our requirements.

#### ***Preclinical Products***

We have established the internal capability to manufacture research quantities of antibody and protein product candidates and have contracted for testing and manufacturing development activities for GGF-2 to be performed by an outside contractor.

#### ***Intellectual Property***

We have in-licensed, or are the assignee of, over 25 U.S. patents, over 60 foreign patents and over 65 patent applications pending in the United States or abroad. There are five major families of patents in our portfolio.

#### ***Zanaflex***

As part of our purchase from Elan of the Zanaflex assets, we acquired one issued U.S. patent and two pending U.S. patent applications. Our issued patent is generally directed to certain methods of reducing somnolence and reducing peak plasma concentrations in patients receiving tizanidine therapy. This issued patent expires in 2021. Our two pending U.S. patent applications are directed to multiparticulate formulations of tizanidine and certain other methods of using tizanidine. The process of seeking patent protection can be time consuming and we cannot assure you that patents will be issued from these pending applications or that, if patents are issued, they will be of sufficient scope to provide meaningful protection of our products.

In addition, we entered into a Supply Agreement with Elan as part of the acquisition, whereby Zanaflex Capsules are manufactured for us by Elan using Elan's proprietary SODAS technology and

proprietary information. This proprietary technology is owned by Elan and, in the event Elan ceases to manufacture Zanaflex Capsules, Elan has agreed to grant us a royalty-free, fully paid-up license of its manufacturing know-how and other information and rights related to the production of Zanaflex Capsules, including a license to use its SODAS technology for specified purposes. We have the right to sublicense this know-how to a third party manufacturer, so long as this third party is not a technological competitor of Elan.

Elan has granted us a license that allows us to use the Zanaflex trademark in the United States and gave us the right to buy the Zanaflex trademark for a nominal sum once specified milestone and royalty payments have been made.

#### ***Fampridine-SR***

We hold an exclusive, worldwide license from CSRO for a U.S. patent and its foreign counterparts for the use of fampridine in the treatment of spasticity and neuropathic pain in chronic SCI. The U.S. patent expires in 2013.

We hold an exclusive, worldwide license from Elan to three U.S. patents, with corresponding issued patents and pending applications in a number of foreign countries, relating to timed delivery formulations of a family of aminopyridine compounds, including fampridine, which also claim methods of administration and treatment for relevant neurological conditions. One of the three U.S. patents expires in 2011 and the other two U.S. patents expire in 2013.

We hold an exclusive license from Cornell University for an issued patent that relates to the use of aminopyridine compositions, including fampridine, for the treatment of diseases of anterior horn cells, including amyotrophic lateral sclerosis, which is also known as Lou Gehrig's disease. This patent expires in 2016.

We also have a pending U.S. patent application and its foreign equivalent directed to methods of using aminopyridines and a pending U.S. patent directed to aminopyridine formulations.

#### ***Chondroitinase***

We have a license to a U.S. application and its foreign counterpart from King's College, University of Cambridge directed to treatment of CNS damage. We have recently filed a number of U.S. patent applications and their foreign counterparts directed to chondroitinase enzymes and methods of use and preparation. In particular, we have filed seven U.S. applications, with foreign equivalents to four of them, directed to fusion proteins of chondroitinase, chimeric proteins including chondroitinase, deletion mutants, and certain methods relating to chondroitinase.

#### ***Neuregulins***

We are the exclusive licensee under a license agreement with CeNeS Pharmaceuticals, plc, of a worldwide portfolio of patents and patent applications related to products of neuregulin genes, including GGF-2. These patents claim the use of particular neuregulins to treat various pathophysiological conditions, particularly stimulating myelinating cells in order to treat demyelinating conditions of the central and peripheral nervous system. These patents also claim a number of additional potential applications of neuregulins, including stimulation of growth in mammalian muscle cells and treating cardiac failure, peripheral neuropathy and nerve injury.

#### ***Remyelinating Antibodies***

We are the exclusive licensee of a portfolio of patents and patent applications related to a series of remyelinating antibodies discovered in the laboratory of Dr. Moses Rodriguez at the Mayo Clinic in Rochester, Minnesota for the treatment of CNS disorders. One U.S. patent has been issued and foreign counterparts of this patent have also issued in Australia, Mexico, New Zealand and South Korea, as

well as in Europe, where patents have been validated in Germany, Spain, France, Great Britain and Italy. Applications are pending elsewhere, including Canada and Japan.

## **Competition**

The market for developing and marketing pharmaceutical products is highly competitive. We are aware of many biotechnology and pharmaceutical companies that are engaged in development and/or marketing of therapeutics for a broad range of CNS conditions. Many of our competitors have substantially greater financial, research and development, human and other resources than we do. Furthermore, many of these companies have significantly more experience than we do in preclinical testing, human clinical trials, regulatory approval procedures and sales and marketing.

### ***Spasticity***

Tizanidine, the active pharmaceutical ingredient in Zanaflex Capsules, Zanaflex tablets and generic tizanidine tablets, is one of the two leading FDA-approved treatments for spasticity, a symptom suffered by both MS and SCI patients. Zanaflex tablets were approved by the FDA in 1996 and lost compound patent protection in 2002. Eleven generic manufacturers of tizanidine are distributing their own tablet formulations. Baclofen, which is also available generically, is the other leading drug for the treatment of spasticity. The mechanism of action and associated effects of baclofen are different from those of tizanidine. Due to the different pharmacokinetic profile of Zanaflex Capsules, Zanaflex tablets and generic tizanidine tablets are not AB-rated with Zanaflex Capsules. To our knowledge there are currently no other treatments for spasticity in clinical development.

### ***MS and SCI***

Current disease management approaches to MS are classified either as relapse management or disease course management approaches. For relapse management, the majority of neurologists treat sudden and severe relapses with a four-day course of intravenous high-dose corticosteroids. Many of these corticosteroids are available generically. For disease course management, there are a number of FDA-approved MS therapies that seek to modify the immune system. These treatments attempt to reduce the frequency and severity of exacerbations or slow the accumulation of physical disability for people with certain types of MS, though their precise mechanisms of action are not known. These products include Avonex from Biogen-IDEC, Betaseron from Schering AG, Copaxone from Teva and Rebif from Serono.

Several biotechnology and pharmaceutical companies, as well as academic laboratories, are involved in research and/or product development for various neurological diseases, including MS and SCI. We are aware that Aventis is developing a sodium/potassium channel blocker, HP 184, with a potential indication in SCI, MS and other conditions. We believe that HP 184 is in clinical trials for SCI and any resulting product could compete with Fampridine-SR. Neurorecovery Inc. has publicly disclosed that it has an immediate release form of fampridine for peripheral nervous system conditions in Phase 2 trials and any resulting product might compete with Fampridine-SR. In certain circumstances, pharmacists are not prohibited from formulating certain drug compounds to fill prescriptions on an individual patient basis. We are aware that at present compounded fampridine is used by some people with MS or SCI. Although we expect this use to decrease substantially if Fampridine-SR is approved, it is possible that some people will continue to use this formulation of fampridine. Several companies are engaged in developing products that include novel immune system approaches and cell transplant approaches to remyelination for the treatment of people with MS. These programs are in early stages of development and may compete with Fampridine-SR or our preclinical candidates in the future.

Our lead product candidate, Fampridine-SR, is the first product to our knowledge that acts to improve neurological function in subjects with MS. We are not aware of other companies in clinical development with products that specifically address walking ability in subjects with MS. As a result of

its focus on improving function, we believe that Fampridine-SR may be complementary to both the relapse management and disease course management therapies that are commercially available. Nonetheless, Fampridine-SR will compete for market acceptance with these current treatments because they have been accepted and regularly prescribed to people with MS by physicians.

## Government Regulation

### *FDA Regulation and Product Approval*

The FDA and comparable regulatory agencies in state and local jurisdictions and in foreign countries impose substantial requirements upon the preclinical testing, clinical development, manufacture, distribution and marketing of pharmaceutical products. These agencies and other federal, state and local entities regulate research and development activities and the testing, manufacture, quality control, safety, effectiveness, labeling, storage, distribution, record keeping, approval, advertising, sale, promotion, import and export of our products and product candidates.

In the United States, Zanaflex tablets, Zanaflex Capsules, and some of our product candidates are regulated by the FDA as drugs. Other of our product candidates are potentially regulated both as drugs and as biological products. Drugs are subject to the Federal Food, Drug, and Cosmetic Act, as amended, and the regulations of the FDA, as well as to other federal, state, and local statutes and regulations. Biologics are also regulated under the Public Health Service Act, as amended. Violations of regulatory requirements at any stage may result in various adverse consequences, including FDA's and other health authorities' delay in approving or refusal to approve a product. Violations of regulatory requirements also may result in enforcement actions, including withdrawal of approval, labeling restrictions, seizure of products, fines, injunctions and/or civil or criminal penalties.

The process required by the FDA under these laws before our product candidates may be marketed in the United States generally involves the following:

- preclinical laboratory and animal tests;
- submission to the FDA of an IND, an application which must become effective before clinical trials may begin;
- completion of two adequate and well-controlled human clinical trials to establish the safety and efficacy of the proposed pharmaceutical in our intended use(s);
- FDA review of whether the facility in which the product is manufactured, processed, packed or held meets standards designed to assure the product's continued quality; and
- submission to the FDA of an NDA in the case of a drug, or a Biologics License Application, or BLA, in the case of a biologic, that must be approved containing preclinical and clinical data, proposed labeling and information to demonstrate that the product will be manufactured to appropriate standards of identity, purity and quality.

The research, development and approval process requires substantial time, effort, and financial resources and we cannot be certain that any approval will be granted on a timely or commercially viable basis, if at all.

Preclinical studies include laboratory evaluation of the product candidate, its chemistry, formulation and stability, as well as animal studies to assess its potential safety and efficacy. We then submit the results of the preclinical studies, together with manufacturing information, analytical data and any available clinical data or literature to the FDA as part of an IND application, which must become effective before we may begin human clinical trials. The IND becomes effective 30 days after the FDA acknowledges that the filing is complete, unless the FDA, within the 30-day time period, raises concerns or questions about the conduct of the preclinical trials or the design of the proposed clinical trials as outlined in the IND. In such a case, the IND sponsor and the FDA must resolve any outstanding concerns before clinical trials can begin. Further, an independent Institutional Review

Board charged with protecting the welfare of human subjects involved in research at each medical center proposing to conduct the clinical trials must review and approve any clinical trial and study subjects must provide informed consent for their participation in the research.

Human clinical trials are typically conducted in three sequential phases which may overlap:

- *Phase 1.* The drug is initially administered into healthy human subjects or subjects with the target condition and tested for safety, dosage tolerance, absorption, metabolism, distribution and excretion.
- *Phase 2.* The drug is administered to a limited subject population to identify possible adverse effects and safety risks, to determine the efficacy of the product for specific targeted diseases and to determine dosage tolerance and optimal dosage.
- *Phase 3.* When Phase 2 evaluations demonstrate that a dosage range of the drug is effective and has an acceptable safety profile, Phase 3 clinical trials are undertaken to further evaluate dosage and clinical efficacy and to further test for safety in an expanded population at geographically dispersed clinical trial sites.

In the case of product candidates for severe or life-threatening diseases such as MS, the initial human testing is often conducted in affected subjects rather than in healthy volunteers. Since these subjects already have the target condition, these clinical trials may provide initial evidence of efficacy traditionally obtained in Phase 2 clinical trials and thus these clinical trials are frequently referred to as Phase 1b clinical trials.

Before proceeding with a study, sponsors may seek a written agreement from the FDA regarding the design, size, and conduct of a clinical trial. This is known as a special protocol assessment, or SPA. Three types of studies are eligible for SPAs: (1) animal carcinogenicity studies, (2) final product stability studies, and (3) clinical studies for pivotal trials whose data will form the primary basis to establish a product's efficacy. Where the FDA agrees to an SPA, the agreement may not be changed by either the sponsor or the FDA except if the sponsor and the FDA agree to a change, or an appropriately senior FDA official determines that a substantial scientific issue essential to determining the safety or effectiveness of the product was identified after the testing began. SPAs thus help establish up front agreement with the FDA about the adequacy of the design of a clinical trial to support a regulatory approval, but the agreement is not binding if new circumstances arise. In addition, even if an SPA remains in place and the trial meets its endpoints with statistical significance, the FDA could determine that the overall balance of risks and benefits for the product candidate is not adequate to support approval, or only justifies approval for a narrow set of uses or approval with restricted distribution or other burdensome post-approval requirements or limitations. There is thus no guarantee that a study will ultimately be adequate to support an approval even if the study is subject to an SPA.

U.S. law requires that studies conducted to support approval for product marketing be "adequate and well controlled." In general, this means that either a placebo or a product already approved for the treatment of the disease or condition under study must be used as a reference control. Studies must also be conducted in compliance with good clinical practice, or GCP, requirements.

We cannot be certain that we will successfully complete Phase 1, Phase 2 or Phase 3 testing of our product candidates within any specific time period, if at all. Furthermore, the FDA or the Institutional Review Boards or the sponsor may prevent clinical trials from beginning or may place clinical trials on hold or terminate them at any point in this process if, among other reasons, they conclude that study subjects are being exposed to an unacceptable health risk.

In the U.S., the results of product development, preclinical studies and clinical trials must be submitted to the FDA for review and approval prior to marketing and commercial shipment of the product candidate. If the product is regulated as a drug, a New Drug Application, or NDA, must be submitted and approved before commercial marketing may begin. If the product, such as an antibody, is regulated as a biologic, a Biologic License Application, or BLA, must be submitted and approved

before commercial marketing may begin. The NDA or BLA must include a substantial amount of data and other information concerning the safety and effectiveness (and, in the case of a biologic, purity and potency) of the compound from laboratory, animal and clinical testing, as well as data and information on manufacturing, product stability, and proposed product labeling.

Each domestic and foreign manufacturing establishment, including any contract manufacturers we may decide to use, must be listed in the NDA or BLA and must be registered with the FDA. The application will generally not be approved until the FDA conducts a manufacturing inspection, approves the applicable manufacturing process for the drug or biological product, and determines that the facility is in compliance with current good manufacturing practice, or cGMP, requirements. If the manufacturing facilities and processes fail to pass the FDA inspection, we will not receive approval to market these products.

Under the Prescription Drug User Fee Act, as amended, the FDA receives fees for reviewing a BLA or NDA and supplements thereto, as well as annual fees for commercial manufacturing establishments and for approved products. These fees can be significant. The NDA or BLA review fee alone can exceed \$700,000, although certain limited deferrals, waivers and reductions may be available.

Under applicable laws and FDA regulations, each NDA or BLA submitted for FDA approval is usually reviewed for administrative completeness and reviewability within 45 to 60 days following submission of the application. If deemed complete, the FDA will "file" the NDA or BLA, thereby triggering substantive review of the application. The FDA can refuse to file any NDA or BLA that it deems incomplete or not properly reviewable. If the FDA refuses to file an application, the FDA will retain 25% of the user fee as a penalty. The FDA has established performance goals for the review of NDAs and BLAs—six months for priority applications and 10 months for regular applications. However, the FDA is not legally required to complete its review within these periods and these performance goals may change over time. Moreover, the outcome of the review, even if generally favorable, typically is not an actual approval but an "action letter" that describes additional work that must be done before the application can be approved. The FDA's review of an application may involve review and recommendations by an independent FDA advisory committee.

The FDA may deny an NDA or BLA if the applicable regulatory criteria are not satisfied or may require additional clinical data. Even if such data is submitted, the FDA may ultimately decide that the NDA or BLA does not satisfy the criteria for approval. If the FDA approves a product, it may limit the approved therapeutic uses for the product as described in the product labeling, require that contraindications, warning statements or precautions be included in the product labeling, require that additional studies be conducted following approval as a condition of the approval, impose restrictions and conditions on product distribution, prescribing or dispensing in the form of a risk management plan, or otherwise limit the scope of any approval or post-approval, or limit labeling. Once issued, the FDA may withdraw product approval if compliance with regulatory standards is not maintained or if problems occur after the product reaches the market. In addition, the FDA may require testing and surveillance programs to monitor the effect of approved products which have been commercialized, and the agency has the power to prevent or limit further marketing of a product based on the results of these post-marketing programs.

Satisfaction of the above FDA requirements or similar requirements of state, local and foreign regulatory agencies typically takes several years or more and the actual time required may vary substantially, based upon the type, complexity and novelty of the pharmaceutical product candidate. Government regulation may delay or prevent marketing of potential products for a considerable period of time or permanently and impose costly procedures upon our activities. We cannot be certain that the FDA or any other regulatory agency will grant approval for any of our product candidates on a timely basis, or on a commercially viable basis, if at all. Success in preclinical or early stage clinical trials does not assure success in later stage clinical trials. Data obtained from preclinical and clinical activities is not always conclusive and may be susceptible to varying interpretations which could delay, limit or

prevent regulatory approval. Even if a product candidate receives regulatory approval, the approval may be significantly limited to specific indications. Further, even after regulatory approval is obtained, later discovery of previously unknown problems with a product may result in restrictions on the product or even complete withdrawal of the product from the market. Delays in obtaining, or failures to obtain regulatory approvals would have a material adverse effect on our business. Marketing our product candidates abroad will require similar regulatory approvals and is subject to similar risks. In addition, we cannot predict what adverse governmental regulations may arise from future U.S. or foreign governmental action.

Any products manufactured or distributed by us pursuant to FDA clearances or approvals are subject to pervasive and continuing regulation by the FDA, including record-keeping requirements, reporting of adverse experiences with the drug, other reporting, advertising and promotion restrictions. The FDA's rules for advertising and promotion require in particular that we not promote our products for unapproved uses, and that our promotion be fairly balanced and adequately substantiated. We must also submit appropriate new and supplemental applications and obtain FDA approval for certain changes to the approved product, product labeling or manufacturing process. Drug manufacturers and their subcontractors are required to register their establishments with the FDA and certain state agencies, and are subject to periodic unannounced inspections by the FDA and certain state agencies for compliance with current Good Manufacturing Practices, which impose certain procedural and documentation requirements upon us and our third-party manufacturers. We cannot be certain that we or our present or future suppliers will be able to comply with the current Good Manufacturing Practices and other FDA regulatory requirements. The FDA also enforces the requirements of the Prescription Drug Marketing Act, or PDMA, which, among other things, imposes various requirements in connection with the distribution of product samples to physicians.

We and our product candidates are also subject to a variety of state laws and regulations in those states or localities where they are or will be marketed. Any applicable state or local regulations may hinder our ability to market our product candidates in those states or localities.

The FDA's policies may change and additional government regulations may be enacted which could prevent or delay regulatory approval of our potential products. Moreover, increased attention to the containment of health care costs in the United States and in foreign markets could result in new government regulations which could have a material adverse effect on our business. We cannot predict the likelihood, nature or extent of adverse governmental regulation which might arise from future legislative or administrative action, either in the United States or abroad.

### ***Orphan Drugs***

Under the Orphan Drug Act, special incentives exist for sponsors to develop products for rare diseases or conditions, which are defined to include those diseases or conditions that affect fewer than 200,000 people in the U.S. Sponsors may request that FDA grant a drug orphan designation prior to approval. We have received Orphan Drug designation for Fampridine-SR for the treatment of both MS and incomplete SCI.

Products designated as orphan drugs are eligible for special grant funding for research and development, FDA assistance with the review of clinical trial protocols, potential tax credits for research, reduced filing fees for marketing applications, and a special seven-year period of market exclusivity after marketing approval. Orphan drug exclusivity prevents FDA approval of applications by others for the same drug and the designated orphan disease or condition. FDA may approve a subsequent application from another person if FDA determines that the application is for a different drug or different use, or if FDA determines that the subsequent product is clinically superior, or that the holder of the initial orphan drug approval cannot assure the availability of sufficient quantities of the drug to meet the public's need. In addition, even when a drug has orphan exclusivity, the FDA may approve a competing drug for the same orphan use. The FDA may also approve someone else's

application for the same drug that has orphan exclusivity, but for a different use, in which case the competing drug could be prescribed by physicians outside its FDA approval for the orphan use, notwithstanding the existence of orphan exclusivity. A grant of an orphan designation is not a guarantee that a product will be approved. If a sponsor receives orphan drug exclusivity upon approval, there can be no assurance that the exclusivity will prevent another person from receiving approval for the same or a similar drug for the same or other uses.

### ***Generic Drugs, AB Ratings and Pharmacy Substitution***

Generic drugs are approved through an abbreviated process, which differs in important ways from the process followed for innovative products. Generally an abbreviated new drug application, or ANDA, is filed with the FDA. The ANDA must seek approval of a drug product that has the same active ingredient(s), dosage form, strength, route of administration, and conditions of use (labeling) as a so-called "reference listed drug" approved under an NDA with full supporting data to establish safety and effectiveness. Only limited exceptions exist to this ANDA sameness requirement, including certain limited variations approved by the FDA through a special suitability petition process. The ANDA also generally contains clinical data to demonstrate that the product covered by the ANDA is absorbed in the body at the same rate and to the same extent as the reference listed drug. This is known as bioequivalence. In addition, the ANDA must contain information regarding the manufacturing processes and facilities that will be used to ensure product quality, and must contain certifications to patents listed with the FDA for the reference listed drug.

Every state has a law permitting or requiring pharmacists to substitute generic equivalents for brand-name prescriptions unless the physician has prohibited substitution. Managed care organizations often urge physicians to prescribe drugs with generic equivalents, and to authorize substitution, as a means of controlling costs. They also may require lower copayments as an incentive to patients to ask for and accept generics.

While the question of substitutability is one of state law, most states look to the FDA to determine whether a generic is substitutable. FDA lists therapeutic equivalence ratings in a publication often referred to as the Orange Book. In general, a generic drug that is listed in the Orange Book as therapeutically equivalent to the branded product will be substitutable under state law and, conversely, a generic drug that is not so listed will not be substitutable. To be considered therapeutically equivalent, a generic drug must first be a pharmaceutical equivalent of the branded drug. This means that the generic has the same active ingredient, dosage form, strength or concentration and route of administration as the brand-name drug. Tablets and capsules are presently considered different dosage forms that are pharmaceutical alternatives and not substitutable pharmaceutical equivalents.

In addition to being pharmaceutical equivalents, therapeutic equivalents must be bioequivalent to their branded counterparts. Bioequivalence for this purpose is defined in the same manner as for ANDA approvals, and usually requires a showing of comparable rate and extent of absorption in a small human study.

Solid oral dosage form drug products generally are rated AB in the Orange Book if they are considered therapeutic equivalents. If bioequivalence has been adequately demonstrated, the products will be rated "AB."

### ***Foreign Regulation and Product Approval***

Outside the United States, our ability to market a product candidate is contingent upon receiving a marketing authorization from the appropriate regulatory authorities. The requirements governing the conduct of clinical trials, marketing authorization, pricing and reimbursement vary widely from country to country. At present, foreign marketing authorizations are applied for at a national level, although within the European Community, or EC, registration procedures are available to companies wishing to market a product in more than one EC member state. If the regulatory authority is satisfied that

adequate evidence of safety, quality and efficacy has been presented, a marketing authorization will be granted. This foreign regulatory approval process involves all of the risks associated with FDA clearance discussed above.

### ***Other Regulations***

In the U.S., the research, manufacturing, distribution, sale, and promotion of drug and biological products are potentially subject to regulation by various federal, state and local authorities in addition to the FDA, including the Centers for Medicare and Medicaid Services (formerly the Health Care Financing Administration), other divisions of the U.S. Department of Health and Human Services (e.g., the Office of Inspector General), the U.S. Department of Justice and individual U.S. Attorney offices within the Department of Justice, and state and local governments. For example, sales, marketing and scientific/educational grant programs must comply with the anti-kickback and fraud and abuse provisions of the Social Security Act, as amended, the False Claims Act, also as amended, the privacy provisions of the Health Insurance Portability and Accountability Act, or HIPAA, and similar state laws. Pricing and rebate programs must comply with the Medicaid rebate requirements of the Omnibus Budget Reconciliation Act of 1990, as amended, and the Veterans Health Care Act of 1992, as amended. If products are made available to authorized users of the Federal Supply Schedule of the General Services Administration, additional laws and requirements apply. All of these activities are also potentially subject to federal and state consumer protection and unfair competition laws.

We are also subject to numerous federal, state and local laws relating to such matters as safe working conditions, manufacturing practices, environmental protection, fire hazard control, and disposal of hazardous or potentially hazardous substances. We may incur significant costs to comply with such laws and regulations now or in the future.

### ***Reimbursement and Pricing Controls***

In many of the markets where we or our collaborative partners would commercialize a product following regulatory approval, the prices of pharmaceutical products are subject to direct price controls (by law) and to drug reimbursement programs with varying price control mechanisms.

In the United States, there has been an increased focus on drug pricing in recent years. Although there are currently no direct government price controls over private sector purchases in the United States, federal legislation requires pharmaceutical manufacturers to pay prescribed rebates on certain drugs to enable them to be eligible for reimbursement under certain public health care programs such as Medicaid. Various states have adopted further mechanisms under Medicaid and otherwise that seek to control drug prices, including by disfavoring certain higher priced drugs and by seeking supplemental rebates from manufacturers. Managed care has also become a potent force in the market place that increases downward pressure on the prices of pharmaceutical products. Federal legislation, enacted in December 2003, has altered the way in which physician-administered drugs covered by Medicare are reimbursed. Under the new reimbursement methodology, physicians are reimbursed based on a product's "average sales price," or ASP. This new reimbursement methodology has generally led to lower reimbursement levels. The new federal legislation also has added an outpatient prescription drug benefit to Medicare, effective January 2006. In the interim, Congress has established a discount drug card program for Medicare beneficiaries. Both benefits will be provided primarily through private entities, which will attempt to negotiate price concessions from pharmaceutical manufacturers.

Public and private health care payors control costs and influence drug pricing through a variety of mechanisms, including through negotiating discounts with the manufacturers and through the use of tiered formularies and other mechanisms that provide preferential access to certain drugs over others within a therapeutic class. Payors also set other criteria to govern the uses of a drug that will be deemed medically appropriate and therefore reimbursed or otherwise covered. In particular, many public and private health care payors limit reimbursement and coverage to the uses of a drug that are either approved by the FDA or that are supported by other appropriate evidence (for example,

published medical literature) and appear in a recognized drug compendium. Drug compendia are publications that summarize the available medical evidence for particular drug products and identify which uses of a drug are supported or not supported by the available evidence, whether or not such uses have been approved by the FDA. For example, in the case of Medicare coverage for physician-administered oncology drugs, the Omnibus Budget Reconciliation Act of 1993, or OBRA '93, with certain exceptions, prohibits Medicare carriers from refusing to cover unapproved uses of an FDA-approved drug if the unapproved use is supported by one or more citations in the American Hospital Formulary Service Drug Information, the American Medical Association Drug Evaluations, or the U.S. Pharmacopoeia Drug Information. Another commonly cited compendium, for example under Medicaid, is the DRUGDEX Information System.

Different pricing and reimbursement schemes exist in other countries. For example, in the European Union, governments influence the price of pharmaceutical products through their pricing and reimbursement rules and control of national health care systems that fund a large part of the cost of such products to consumers. The approach taken varies from member state to member state. Some jurisdictions operate positive and/or negative list systems under which products may only be marketed once a reimbursement price has been agreed. Other member states allow companies to fix their own prices for medicines, but monitor and control company profits. The downward pressure on health care costs in general, particularly prescription drugs, has become very intense. As a result, increasingly high barriers are being erected to the entry of new products, as exemplified by the National Institute for Clinical Excellence in the UK which evaluates the data supporting new medicines and passes reimbursement recommendations to the government. In addition, in some countries cross-border imports from low-priced markets (parallel imports) exert a commercial pressure on pricing within a country.

## **Employees**

As of August 31, 2005, we had 61 employees. Of the 61 employees, 21 perform research and development activities, including both preclinical programs and clinical trials, 25 work in sales, marketing and communications and 15 perform general and administrative tasks.

## **Facilities**

Our principal executive offices are located in an approximately 30,000 square foot facility in Hawthorne, NY, which houses offices and laboratory space. The current annual rent for this facility is \$642,000. We believe that our facility is currently adequate for our purposes and that it will continue to be so for the foreseeable future. The lease for this facility expires in January 2008.

## **Legal Proceedings**

We are not currently a party to any material legal proceedings.

## MANAGEMENT

### Executive Officers and Directors

The following table sets forth, as of October 1, 2005, information about our executive officers and directors.

Name	Age	Position(s)
Ron Cohen, M.D.	49	President, Chief Executive Officer and Director
Andrew R. Blight, Ph.D.	54	Chief Scientific Officer
Mary Fisher	44	Chief Operating Officer
David Lawrence, M.B.A.	48	Chief Financial Officer
Jane Wasman	49	Executive Vice President, General Counsel and Secretary
Standish M. Fleming	58	Director
John Friedman(1)(2)(3)	52	Director
Sandra Panem, Ph.D.(1)(2)(3)	59	Director
Barclay A. Phillips	43	Director
Mark R.E. Pinney, M.B.A., C.F.A., M.S.	51	Director
Steven M. Rauscher	52	Director
Michael Steinmetz, Ph.D.(2)	58	Director
Wise Young, Ph.D., M.D.(3)	55	Director

(1) Member of the governance and nominating committee

(2) Member of the executive compensation committee

(3) Member of the audit committee

**Ron Cohen, M.D.**, has served as our President and Chief Executive Officer since he founded Acorda in 1995. Dr. Cohen previously was a principal in the startup of Advanced Tissue Sciences, Inc., a biotechnology company engaged in the growth of human organ tissues for transplantation uses. Dr. Cohen received his B.A. degree with honors in Psychology from Princeton University, and his M.D. from the Columbia College of Physicians & Surgeons. He completed a residency in Internal Medicine at the University of Virginia Medical Center, and is Board Certified in Internal Medicine. Dr. Cohen serves on the Board of Directors of Zymenex A/S, a Danish pharmaceutical company, and on the Emerging Company Section of the Board of the Biotechnology Industry Organization (BIO). He is Chairman Emeritus and a Director of the Board of the New York Biotechnology Association and also serves as on the Scientific Advisory Board of the Daniel Heumann Fund and as a member of the Columbia-Presbyterian Health Sciences Advisory Council.

**Andrew R. Blight, Ph.D.**, has been our Chief Scientific Officer since January 2004 and previously served as our Executive Vice President, Research and Development from 2000 to 2004, and Vice President from 1998 to 2000. Prior to joining Acorda, Dr. Blight spent approximately six years as Professor and Director of the Neurosurgery Research Laboratory at the University of North Carolina at Chapel Hill. Dr. Blight held prior academic positions at Purdue University and New York University. Dr. Blight is a leader in SCI pathophysiology research and has made several important contributions to the field, particularly on the role of demyelination in SCI. He also pioneered the therapeutic application of 4-AP in SCI animal models and in human clinical trials. Dr. Blight is a member of the editorial board of the Journal of Neurotrauma and has served as a member of the NIH NSDA review committee. He was previously Secretary, Treasurer and Vice President of the National Neurotrauma Society. Dr. Blight received his B.S. in Zoology and his Ph.D. in Zoology/Neurobiology from the University of Bristol, U.K.

**Mary Fisher** has been our Chief Operating Officer since January 2005 and previously served as our Vice President, Commercial Operations from 2003 through 2004 and Vice President, Marketing and Strategic Planning from 2000 to 2003. From 1999 to 2000, Ms. Fisher was an independent consultant to various pharmaceutical companies. From 1994 to 1999, Ms. Fisher was Vice President, Strategic Healthcare and Commercial Operations for Cephalon, Inc. In that capacity she was responsible for the company's corporate sales, managed care marketing, pricing, reimbursement, health economics, patient support programs, product planning, commercial manufacturing, distribution and customer service. From 1990 until joining Cephalon, Ms. Fisher was Corporate Communications Manager for Immunex Corporation.

**David Lawrence, M.B.A.**, has been our Chief Financial Officer since January 2005. He previously served as our Vice President, Finance from January 2001 through 2004, and Director, Finance from 1999 to 2001. From 1991 to 1999, Mr. Lawrence held several positions for Tel-Air Communications, Inc. including Vice President and Controller. Prior to Tel-Air, he held financial management positions of Controller and Finance Manager for Southwestern Bell and Metromedia Telecommunications respectively. Mr. Lawrence received his undergraduate degree in Accounting from Roger Williams College, and an M.B.A in Finance from Iona College. Mr. Lawrence is a founding member and currently serves on the Board of Directors as Treasurer of The Brian Ahearn Children's Fund.

**Jane Wasman, J.D.**, has been our Executive Vice President, General Counsel and Corporate Secretary since May 2004. From 1995 to 2004, Ms. Wasman held various leadership positions at Schering-Plough Corporation, including Staff Vice President and Associate General Counsel responsible for legal support for U.S. Pharmaceuticals operations, including sales, marketing and compliance; FDA regulatory matters; global research and development; and, corporate licensing and business development. She served as Staff Vice President, International in 2001 and as Staff Vice President, European Operations—Legal from 1998 to 2000. Previously, Ms. Wasman specialized in litigation at Fried, Frank, Harris, Shriver & Jacobson. She also served as Associate General Counsel to the U.S. Senate Committee on Veteran's Affairs. Ms. Wasman graduated Magna Cum Laude from Princeton University and earned her J.D. from Harvard Law School.

**Standish M. Fleming** has been a member of our Board of Directors since 2004. He is a 19-year veteran of life sciences venture capital investing. Mr. Fleming co-founded Forward Ventures in 1993. Before establishing Forward Ventures II in 1993, Mr. Fleming served as start-up chairman, president and CEO of GeneSys Therapeutics (now part of Cell Genesys). He has served as founding director and acting president of Triangle Pharmaceuticals (now part of Gilead Sciences, Inc.), CombiChem (now part of Bristol-Myers Squibb) and Corixa and GenQuest (now both part of GlaxoSmithKline). Mr. Fleming was a founding board member of Ciphergen Biosystems and Gryphon Sciences. He is a former president of the Biotechnology Venture Investors Group. Mr. Fleming began his venture career with Ventana Growth Funds in San Diego in 1986. Mr. Fleming earned his B.A. from Amherst College and his M.B.A. from the UCLA Graduate School of Management. Mr. Fleming has served on the boards of 19 venture-backed companies and is also currently a director of Ambit and Sanarus Medical, and a founding director of Arizeke Pharmaceuticals and Nereus Pharmaceuticals.

**John Friedman** has been a member of our Board of Directors since 2003. Mr. Friedman is the Managing Partner of Easton Hunt Capital Partners, L.P., a private investment firm that he founded in 1999. Since 1991, Mr. Friedman has also been the President of Easton Capital Corp., a private investment firm. He also helped manage Atrium Capital Corporation, an investment firm, from 1991 to 1993. From 1989 to 1991, Mr. Friedman was the founder and Managing General Partner of Security Pacific Capital Investors, a private investment firm. Prior to joining Security Pacific, Mr. Friedman was a Managing Director and Partner at E.M. Warburg, Pincus & Co., Inc., where he was employed from 1981 to 1989. From 1978 to 1980, Mr. Friedman was an attorney with Sullivan & Cromwell LLP and during 1980 he was employed at Shearson Loeb Rhoades. Mr. Friedman received a B.A. in History

from Yale College and a J.D. degree from Yale Law School. Mr. Friedman is a member of the board of directors of Comverse Technology, Inc., a telecommunications equipment company, YM BioSciences, Inc., a biotechnology company, Renovis, a biotechnology company, Conor Medsystems, Inc., a drug delivery technology company, as well as several private companies. Mr. Friedman is also co-chairman of the President's Council of the Cold Spring Harbor Laboratory.

**Sandra Panem, Ph.D.**, has been a member of our Board of Directors since 1998. She is currently a partner at Cross Atlantic Partners, which she joined in 2000. From 1994 to 1999, Dr. Panem was President of Vector Fund Management, the then asset management affiliate of Vector Securities International. Prior thereto, Dr. Panem served as Vice President and Portfolio Manager for the Oppenheimer Global BioTech Fund, a mutual fund that invested in public and private biotechnology companies. Previously, she was Vice President at Salomon Brothers Venture Capital, a fund focused on early and later-stage life sciences and technology investments. Dr. Panem was also a Science and Public Policy Fellow in economic studies at the Brookings Institution, and an Assistant Professor of Pathology at the University of Chicago. She received a B.S. in biochemistry and Ph.D. in microbiology from the University of Chicago. Dr. Panem currently serves on the boards of directors of Martek Biosciences Corp., Bioject Medical Technologies, Inc., Labcyte, Inc. and Confluent Surgical, Inc.

**Barclay A. Phillips** has been a member of our Board of Directors since September 2004. Mr. Phillips has been a Managing Director of Vector Fund Management, a venture capital firm focused on investments in the life sciences and healthcare industry, since 1999. From 1991 to 1999, Mr. Phillips served in various roles including Director of Private Placements and Biotechnology Analyst for INVESCO Funds Group, Inc. From 1985 to 1990, Mr. Phillips held positions in sales and trading with Paine Webber, Inc. and Shearson Lehman Hutton, Inc. Over the last twelve years, Mr. Phillips has served on the boards of a number of private companies and currently serves as a Director of CancerVax Corp. Mr. Phillips received a B.A. in economics from the University of Colorado.

**Mark R. E. Pinney, M.B.A., C.F.A., M.S.**, joined our Board of Directors at our founding. He was also our Chief Financial Officer from 2001 to 2004. Since 2004, he has served as Chief Financial Officer and Chief Privacy Officer of Tacoda Systems, Inc. From 2000 to 2001, Mr. Pinney was Chairman of CanDo, Inc., an Internet company that offered product and service solutions to people with disabilities. In 1998, he co-founded and was Chief Executive Officer of LifeWire, Inc., a company developing community-based destination web sites for the disability population. LifeWire merged with CanDo in 2000. Mr. Pinney also co-founded Real Media, Inc., an Internet advertising software and services firm, in 1996. From 1984 to 1988, he was Vice President, Corporate Finance for Merrill Lynch Capital Markets and from 1988 to 1992, he was Vice President, Private Transactions at Dillon Read & Co., Inc. Mr. Pinney also serves on the Advisory Board of United Spinal Association. He received an undergraduate degree in engineering at the University of Exeter, England, an M.B.A. from the University of Chicago Graduate School of Business and a masters degree in engineering from Columbia University. He is a Chartered Financial Analyst.

**Steven M. Rauscher** has served on our Board of Directors since 2005. He is President and CEO of Oscient Pharmaceuticals Corporation, a commercial stage biopharmaceutical company. He joined Oscient in 2000 having served as a member of the Board of Directors since 1993. Previously, Mr. Rauscher was CEO of AmericasDoctor, a company providing clinical research services to the pharmaceutical industry. Prior to AmericasDoctor, he held a number of leadership positions at Abbott Laboratories, including Vice President of Corporate Licensing, Vice President of Business Development, International Division and Vice President of Sales, U.S. Pharmaceuticals. Mr. Rauscher received a B.S. from Indiana University and an M.B.A. from the University of Chicago.

**Michael Steinmetz, Ph.D.**, has been a member of our Board of Directors since 1999. Dr. Steinmetz is a Managing Director at Clarus Ventures LLC, a company he co-founded in 2005. From 1999 to June 2005, he was a General Partner of MPM's BioVentures' Funds. Prior to MPM, he held positions at

various academic institutions, including the California Institute of Technology and the Basel Institute for Immunology where he was a permanent member. In 1986, he joined Hoffmann-La Roche and held various leadership positions in R&D, initially in Switzerland and subsequently in the United States where, as Vice President of Preclinical Research and Development, he was responsible for Roche's drug discovery activities in the United States and Roche's global biotechnology efforts. Dr. Steinmetz received a degree in chemistry from the University of Hamburg, Germany and holds a Ph.D. from the University of Munich, Germany. He has done academic research in the areas of Biochemistry, Molecular Biology and Immunology and has published over 130 manuscripts in leading scientific journals.

**Wise Young, Ph.D., M.D.**, has been a member of the board of directors and of our scientific advisory board since the founding of the company in 1995. Dr. Young has been at Rutgers University since 1997, where he serves as Professor and Chair of the Department of Cell Biology and Neuroscience, Professor II and Director of the Neuroscience Center and founder of the W.M. Keck Center for Neuroscience. Dr. Young is one of the preeminent scientists in the fields of spinal cord injury and neurotrauma, SCI animal models, and the pharmacological therapy of SCI. He was the Principal Investigator for the Multicenter Animal Spinal Cord Injury Study, funded by the National Institutes of Health; is editor-in-chief of *Current Concepts in Critical Care and Trauma*; and serves on numerous editorial boards, including those of *Experimental Neurology*, *Journal of Neurotrauma*, *Brain Research* and *Stroke*. Dr. Young has received the Wakeman Award for Research in Neurosciences, and a Jacob Javits Neuroscience Award from the National Institute of Neurological Disorder and Stroke. He is also a member of the Scientific Advisory Council of the American Paralysis Association and of the National Acute Spinal Cord Injury Study executive committee. Dr. Young received a B.A. in biology and chemistry from Reed College, a Ph.D. in physiology and biophysics from the University of Iowa and an M.D. from Stanford University.

## Board Composition

Our board of directors currently has nine members. Upon completion of this offering, our board of directors will consist of nine directors divided into three classes, with each class serving for a term of three years:

- the class I directors will be Mr. Pinney, Dr. Steinmetz and Mr. Fleming; their terms will expire at the annual meeting of stockholders to be held in 2006;
- the class II directors will be Dr. Panem, Dr. Young and Mr. Friedman; their terms will expire at the annual meeting of stockholders to be held in 2007; and
- the class III directors will be Dr. Cohen, Mr. Rauscher and Mr. Phillips; their terms will expire at the annual meeting of stockholders to be held in 2008.

At each annual meeting of stockholders, the successors to directors whose terms will then expire will be elected for three-year terms. This classification of the board of directors may have the effect of delaying or preventing changes in control or management. See "Risk Factors—Certain provisions of Delaware law, our certificate of incorporation and our by-laws may delay or prevent an acquisition of us that stockholders may consider favorable or may prevent efforts by our stockholders to change our directors or our management, which could decrease the value of your shares."

We believe that a majority of the members of our Board of Directors will be independent under the current independence requirements of the Nasdaq National Market and the Securities and Exchange Commission, or the SEC. The authorized number of directors may be changed by resolution adopted by a majority of the board of directors.

## **Director Compensation**

Our outside directors compensation policy provides that new outside directors on our board receive an initial grant of stock options in the amount of 0.2% of the fully diluted shares of our common stock, or a comparable adjusted number of stock appreciation rights or shares of restricted stock, with a fair market value exercise price and a three-year quarterly vesting schedule commencing on the date of the award, unless they hold at least an equivalent amount of common stock through prior ownership. On an annual basis, at the discretion of the board of directors upon the recommendation of the compensation committee, outside directors can receive stock options in the amount of up to 0.02% of the fully diluted shares of our common stock, or a comparable adjusted number of stock appreciation rights or shares of restricted stock, with a fair market value exercise price and a one-year quarterly vesting schedule. Upon consummation of this offering, this compensation policy will be extended to all of the outside directors on our board of directors. Directors are also reimbursed for reasonable expenses related to their service on our board of directors.

## **Board Committees**

Our board of directors has an audit committee, a compensation committee and a nominations committee.

### ***Audit Committee***

Our audit committee consists of Mr. Phillips, Mr. Fleming and Dr. Steinmetz. Mr. Phillips serves as chair of our audit committee. Our board of directors has determined that Mr. Fleming qualifies as an "audit committee financial expert" as that term is defined in Item 401(h) of Regulation S-K of the Securities Act. We believe that the composition of our audit committee meets, and the functioning of our audit committee will comply with, the applicable requirements of the Sarbanes-Oxley Act of 2002, the Nasdaq National Market and SEC rules and regulations.

Our audit committee is responsible for:

- approving and retaining the independent auditors to conduct the annual audit of our books and records;
- reviewing the proposed scope and results of the audit;
- reviewing and pre-approving the independent auditors' audit and non-audit services rendered;
- approving the audit fees to be paid;
- reviewing accounting and financial controls with the independent auditors and our financial and accounting staff;
- reviewing and approving transactions between us and our directors, officers and affiliates;
- recognizing and preventing prohibited non-audit services;
- establishing procedures for complaints received by us regarding accounting matters;
- overseeing internal audit functions; and
- overseeing non-financial compliance.

We have adopted a written audit committee charter that we will make available on our website.

### ***Compensation Committee***

Our compensation committee consists of Dr. Panem, Mr. Rauscher and Dr. Young. Dr. Panem serves as chair of our compensation committee. We believe that the composition of our compensation

committee meets, and the functioning of our compensation committee will comply with, the applicable requirements of the Nasdaq National Market and SEC rules and regulations. Our compensation committee is responsible for:

- reviewing and recommending the compensation arrangements for executives, including the compensation for our president and chief executive officer;
- establishing and reviewing general compensation policies with the objective to attract and retain superior talent, to reward individual performance and to achieve our financial goals; and
- administering our stock incentive plan and annual bonus pool.

We have adopted a written compensation committee charter that we will make available on our website.

#### ***Nominations Committee***

We have established a nominations committee, to be effective upon the closing of this offering. The nominations committee will be responsible for identifying potential candidates to serve on our board. We have approved a written nominations committee charter that also will be effective upon the closing of this offering and that sets forth procedures for the consideration of director nominees and other related matters.

#### **Compensation Committee Interlocks and Insider Participation**

The compensation of our executive officers is currently determined by our compensation committee, as described above. None of our executive officers has served as a member of the board of directors or compensation committee of any entity that has one or more executive officers serving as a member of our board of directors or compensation committee.

Dr. Panem is affiliated with Cross Atlantic Partners, which participated in the sale of our Series J preferred stock in a private placement consummated in May 2003. Pursuant to an amended and restated registration rights agreement among us and certain of our stockholders, including entities affiliated with Dr. Panem, the parties to the registration rights agreement have demand and piggy-back registration rights. See "Certain Relationships and Related Transactions."

#### **Executive Compensation**

The following summary compensation table sets forth the aggregate compensation awarded to, earned by or paid to the following individuals during the fiscal year ended December 31, 2004:

- our chief executive officer;
- our four other most highly compensated executive officers who were serving as executive officers as of December 31, 2004;
- David Lawrence, who has served as our chief financial officer since January 2, 2005 and
- Mark R.E. Pinney, who served as our chief financial officer until October 31, 2004.

We refer to these individuals as our "named executive officers."

## SUMMARY COMPENSATION TABLE

Name and Principal Position	Year	Annual Compensation			Long-Term Compensation		All Other Compensation
		Salary		Bonus(2)	Restricted Stock Award(3)	Options	
Ron Cohen, M.D. President and Chief Executive Officer	2004	\$ 305,000	\$ 120,000		260,385	—	—
Andrew R. Blight, Ph.D. Chief Scientific Officer	2004	\$ 210,000	\$ 65,450		97,385	—	—
Mary Fisher Chief Operating Officer(4)	2004	\$ 210,000	\$ 74,000		157,231	—	109,087
Mitchell Katz, Ph.D(5) Vice President, Clinical Programs	2004	\$ 198,300	\$ 67,375		97,615	—	—
Mark Pinney, M.B.A., C.F.A.(6) Chief Financial Officer	2004	\$ 180,250	\$ 75,050		81,385	—	—
Jane Wasman(7) Executive VP & General Counsel	2004	\$ 225,000	\$ —		77,615	—	25,000
David Lawrence M.B.A.(8) Chief Financial Officer	2004	\$ 164,800	\$ 64,000		64,231	—	—
							835,847(1)

(1) The total aggregate restricted stock holdings as of December 31, 2004.

(2) These bonuses were earned in calendar year 2003 and paid in calendar year 2004. No bonuses were earned in calendar year 2004 and paid in 2005.

(3) These restricted stock awards are subject to vesting over a four-year period as follows: the first installment will vest on the last to occur of (a) the expiration of the lock-up period following our initial public offering, and (b) the third day after public announcement of data regarding either the primary outcome measure of our Fampridine-SR Phase 3 trial in MS or suspension or termination of the trial, whichever comes first, and (c) in the case of Ron Cohen, June 30, 2007; except that if the vesting date under (a) or (b) or (c) would occur during a "blackout" period under our insider trading policy, the vesting date will be the first day following termination of the blackout period. The first vested installment under each restricted stock award will be calculated as the total number of shares covered by the award multiplied by a fraction, the numerator of which is the number of months from the vesting commencement date to the date on which the first installment of restricted shares vest, or the "initial vesting date," and the denominator is 48. All remaining restricted shares will vest in equal quarterly installments, measured from the vesting commencement date, except that for any partial quarter in which the initial vesting date occurs, the unvested portion of shares remaining for that quarter will vest at the end of such quarter. The vesting commencement date for each of these individuals was March 9, 2004, with the exception of Ms. Wasman, whose vesting commencement date was May 10, 2004.

(4) Ms. Fisher was Executive Vice President, Operations in 2004 and was promoted to Chief Operating Officer on January 1, 2005. Other Compensation expense represents relocation costs.

(5) Dr. Katz resigned his position effective February 18, 2005. All of Dr. Katz's restricted shares have been returned to the plan.

(6) Mr. Pinney resigned his position effective October 31, 2004. Mr. Pinney's full annual salary in 2004 was \$210,000. Mr. Pinney has 11,868 restricted shares outstanding and 69,516 have been returned to the plan.

(7) Ms. Wasman began employment in May 2004.

(8) Mr. Lawrence was Vice President, Finance in 2004 and was promoted to Chief Financial Officer on January 1, 2005.

### Stock Options

#### Option Grants in Last Year

No stock option grants were made to the named executive officers during the calendar year ended December 31, 2004. No stock appreciation rights were granted to these individuals during such year.

### **Aggregate Exercise of Stock Options and Year-end Option Values**

The following table contains information regarding the number of shares of common stock subject to both exercisable and unexercisable stock options, as well as the value of unexercisable in-the-money options as of December 31, 2004 for the named executive officers. There was no public market for our common stock as of December 31, 2004. Accordingly, the value of unexercised in-the-money options as of such date has been calculated by determining the difference between the exercise price per share and an assumed offering price of \$ [redacted] per share, which is the midpoint of the estimated price range shown on the cover of this prospectus.

Name	Shares Acquired on Exercise	Value Realized (\$)	Number of Securities Underlying Unexercised Options at December 31, 2004		Value of Unexercised In-the-Money Options at December 31, 2004	
			Exercisable	Unexercisable	Exercisable	Unexercisable
Ron Cohen	0	0	637,559	15,349	\$ [redacted]	\$ [redacted]
Andrew Blight	0	0	94,642	481		
Mary Fisher	0	0	33,296	3,592		
Mitchell Katz	0	0	28,858	1,644		
Mark Pinney	0	0	144,812	34,142		
Jane Wasman	0	0	0	0		
David Lawrence	0	0	25,888	3,002		

The following table sets forth the number of shares underlying options that have been issued to each of the named executive officers in calendar year 2005.

Name	Number of Shares Underlying Stock Options Granted in Calendar Year 2005
Ron Cohen	51,265
Andrew Blight	52,338
Mary Fisher	132,324
Jane Wasman	44,769
David Lawrence	70,109

### **Amended and Restated 1999 Employee Stock Option Plan**

In June 1999, our board of directors adopted the 1999 Employee Stock Option Plan. We obtained stockholder approval of the plan in August 1999. The plan allows us to issue awards of stock appreciation rights, incentive stock options or nonstatutory stock options for shares of our common stock. Our compensation committee administers the plan, selects those persons who are to be granted awards under the plan and determines the terms and conditions of those awards. Our directors, key employees, independent contractors, agents and consultants are eligible to receive awards under our plan, but only employees and officers may receive incentive stock options. As of December 31, 2004 we reserved a total of 2,443,282 shares of common stock for issuance and have granted options to purchase 1,244,905 shares under the plan.

In February 2004, the 1999 Employee Stock Option Plan was amended to provide for the issuance of restricted stock in addition to stock options and stock appreciation rights. Any shares of restricted stock granted under the 1999 Stock Option Plan are subject to such restrictions as our compensation committee determines are appropriate. As of December 31, 2004, we have 1,127,808 restricted shares outstanding under the plan.

In September 2005, our board of directors adopted an amendment to the plan, which has been approved by our stockholders. The amendment to the plan provides for automatic annual increases to the share reserve on the first day of each fiscal year by a number of shares equal to the lesser of:

- 4% of our then outstanding shares of common stock; or
- a number determined by our board of directors.

The exercise price per share of the incentive stock options awarded under the plan must be at least equal to the fair market value of a share of our common stock on the date of grant. The exercise price per share of nonstatutory stock options awarded under the plan must be equal to the fair market value of a share of our common stock on the date of grant, or such other price that the compensation committee may determine is appropriate. The compensation committee determines the exercise period of the stock options, but in no event will the stock options expire later than ten years from the date of grant. Except as the compensation committee may otherwise determine, upon the voluntary termination or involuntary termination without cause of the option holder, the stock options may be exercised for a period of three months after such termination. In the case of termination of the option holder by reason of retirement or due to disability, the stock options may be exercised at any time to the extent that such stock option was vested, but only within one year of termination in the case of incentive stock options. In the case of termination by death, the option holder's estate, or any person who acquires the stock option by reason of the option holder's death, may exercise the stock option within a period of three years after the option holder's death.

The compensation committee has the authority to include with any stock option award a progressive stock option, which allows an option holder to exercise their stock option by surrendering shares of common stock and entitles them to receive additional shares of common stock equal to the number of shares surrendered. The compensation committee also has the authority to grant stock appreciation rights in connection with any stock option award, which may be paid in shares of common stock, cash or both, at the discretion of the compensation committee and subject to the requirements of the plan.

In the event of a tender offer by a person or persons other than us, for all or any part of the outstanding stock, which if upon consummation of the tender offer, the offeror or offerors would, own, beneficially or of record, an aggregate of more than 25% of our outstanding common stock, or in the event of a change of control, the stock options and any outstanding shares of restricted stock will become immediately exercisable to the extent of the total number of shares subject to the stock options. The compensation committee may authorize payment of cash upon exercise of a stock appreciation right in the event of a tender offer as described above, or a change of control.

In September 2003, we repriced 115,578 stock options issued to employees, which had an exercise price per option of more than \$7.64, with a new exercise price of \$7.64. In March 2004, we repriced 1,227,648 stock options issued to employees, which had an exercise price per option of more than \$2.60, with a new exercise price per option of \$2.60. We recognized additional compensation charges for these repricings (see Note 9 to our consolidated financial statements included in this prospectus).

#### **401(k) Plan**

Effective September 1, 1999, we adopted a defined contribution 401(k) savings plan covering all of our employees. Participants may elect to defer a percentage of their annual pre-tax compensation to the 401(k) plan, subject to defined limitations. Our board of directors has discretion to match contributions made by our employees. We did not make any matching contributions to the plan in fiscal years 2000, 2001, 2002 or in calendar years 2003 and 2004.

#### **Employment Contracts, Termination of Employment and Change-in-Control Arrangements**

We are a party to an employment agreement with Dr. Cohen that governs the terms and conditions of his employment as our President and Chief Executive Officer. The employment

agreement provides for a base annual salary of \$280,000, subject to annual increases and bonuses at the discretion of the board of directors. His current salary is \$305,000. Dr. Cohen is eligible to receive annual performance-based stock options to purchase common stock in an amount determined by the board of directors based on Dr. Cohen's individual performance and the achievement of our goals and objectives. Dr. Cohen's employment agreement would have expired in January 2004, but is subject to automatic successive one-year renewal periods unless either Dr. Cohen or we give the other written notice at least 60 days prior to the expiration date that Dr. Cohen or we do not intend to renew the contract. Dr. Cohen's employment agreement has been renewed effective January 2005 for a one-year period. In the event we terminate the agreement with Dr. Cohen without cause, or if Dr. Cohen voluntarily terminates the agreement with good reason, we are obligated to make severance payments equal to one year's base annual salary and COBRA premium payments for the severance period plus a bonus equal to his prior year's bonus pro rated for the number of days worked prior to termination. In such event, all of Dr. Cohen's options will become immediately exercisable and will remain exercisable for 48 months following termination. If Dr. Cohen's employment terminates for death or disability, we are obligated to pay his base salary for three months and COBRA premiums for the COBRA coverage period and 65% of his outstanding options will become immediately vested and remain exercisable for 48 months following such termination. In the event of a change in control, the vesting of Dr. Cohen's options will be governed by the terms of our stock option plan and his stock option agreement, but in no event will less than 65% of Dr. Cohen's then unvested stock options become immediately vested and exercisable. If Dr. Cohen voluntarily terminates his employment without good reason following a change in control, he is entitled to receive the same severance and bonus package described above, however, only 65% of his outstanding options will become immediately vested and remain exercisable for 48 months following termination. Following his termination of employment, Dr. Cohen will remain subject to confidentiality, non-competition and non-solicitation covenants for one year in the case of non-competition and non-solicitation and five years in the case of confidentiality.

On September 26, 2004, we entered into an amendment to Dr. Cohen's employment agreement to increase the amount of severance to which he would be entitled in the event of a termination of his employment by us without cause or by Dr. Cohen with good reason from one year to 15 months and to make such severance, together with his prorated bonus, payable in one lump sum within 30 days after such termination.

#### **Indemnification of Directors and Executive Officers and Limitation on Liability**

Our certificate of incorporation currently provides and, upon the closing of this offering, our amended and restated certificate of incorporation will provide, that we shall indemnify our directors and officers to the fullest extent permitted by Delaware law. Upon the closing of this offering, our amended and restated certificate of incorporation will also provide that, with respect to proceedings initiated by our officers and directors, we are only required to indemnify these persons if the proceeding was authorized by our board of directors. Our amended bylaws permit us, by action of our board of directors, to indemnify our other employees and agents to the same extent as we are required to indemnify our officers and directors.

In addition, our certificate of incorporation provides, and upon the closing of this offering our amended and restated certificate of incorporation will provide, that our directors will not be personally liable to us or our stockholders for monetary damages for any breach of fiduciary duty as a director, except for liability:

- for any breach of the director's duty of loyalty to us or our stockholders;
- for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law;
- under Section 174 of the Delaware General Corporation Law; or
- for any transaction from which the director derives an improper personal benefit.

There is no pending litigation or proceeding involving any of our directors or officers for which indemnification is being sought, nor are we aware of any pending or threatened litigation that may result in claims for indemnification by any director or officer.

## CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

### Sale of Securities

In March 2001, we consummated a private placement of 10,204,047 shares of Series I preferred stock for an aggregate purchase price of approximately \$39,694,000. Except for Michael Steinmetz, Standish Fleming and Barclay Phillips, who are affiliated with MPM/BB Bioventure, Forward Ventures and Vector Fund Management, respectively, none of our executive officers or directors purchased any shares of the Series I preferred stock.

The following table sets forth, with respect to the Series I preferred stock transaction, the purchase price per share, the aggregate shares purchased and the total investment for MPM/BB Bioventure Group, Forward Ventures and Vector Fund Management:

<b>Investor</b>	<b>Purchase Price per Share of Series I Preferred</b>	<b>Aggregate Shares of Series I Preferred Purchased</b>	<b>Total Investment in Series I Preferred</b>
MPM/BB Bioventure Group	\$3.89	639,359	\$2,487,107
Forward Ventures	\$3.89	1,542,417	\$6,000,002
Vector Fund Management	\$3.89	398,547	\$1,550,348

In May 2003, we consummated a private placement of 112,790,233 shares of Series J preferred stock for an aggregate purchase price of approximately \$55,267,000. Except for Michael Steinmetz, John Friedman, Sandra Panem, Standish Fleming and Barclay Phillips, who are affiliated with MPM/BB Bioventure Group, Easton Hunt Capital Partners, Cross Atlantic Partners, Forward Ventures and Vector Fund Management, respectively, none of our executive officers or directors purchased any shares of the Series J preferred stock.

The following table sets forth, with respect to the Series J preferred stock transaction, the purchase price per share, the aggregate shares purchased and the total investment for each of MPM/BB Bioventure Group, Easton Hunt Capital Partners, Cross Atlantic Partners, Forward Ventures and Vector Fund Management:

<b>Investor</b>	<b>Purchase Price per Share of Series J Preferred</b>	<b>Aggregate Shares of Series J Preferred Purchased</b>	<b>Total Investment in Series J Preferred</b>
MPM/BB Bioventure group	\$ 0.49	15,306,121	\$ 7,500,000
Easton Hunt Capital Partners	\$ 0.49	11,224,490	\$ 5,500,000
Cross Atlantic Partners	\$ 0.49	8,506,256	\$ 4,168,065
Forward Ventures	\$ 0.49	8,163,264	\$ 4,000,000
Vector Fund Management	\$ 0.49	2,040,816	\$ 1,000,000

In March 2004, we consummated a private placement of 1,533,330 shares of Series K preferred stock for an aggregate purchase price of approximately \$11,499,958. Except for John Friedman and Sandra Panem, who are affiliated with Easton Hunt Capital Partners and Cross Atlantic Partners, respectively, none of our executive officers or directors purchased any shares of the Series K preferred stock.

The following table sets forth, with respect to the Series K preferred stock transaction, the purchase price per share, the aggregate shares purchased and the total investment for each of Easton Hunt Capital Partners, Easton Hunt New York and Cross Atlantic Partners:

<b>Investor</b>	<b>Purchase Price per Share of Series K Preferred</b>	<b>Aggregate Shares of Series K Preferred Purchased</b>	<b>Total Investment in Series K Preferred</b>
Easton Hunt Capital Partners	\$ 7.50	100,000	\$ 750,000
Easton Hunt New York	\$ 7.50	100,000	\$ 750,000
Cross Atlantic Partners	\$ 7.50	55,574	\$ 416,805

### **Board Representation and Registration Rights**

Pursuant to an amended and restated registration rights agreement dated as of March 3, 2004, the holders of our Series I Preferred, Series J Preferred and Series K preferred stock have demand and piggy-back registration rights. Pursuant to the terms of this agreement, holders of at least 30% of outstanding "registerable securities" have the right to initiate a demand registration, subject to our ability to delay registration under certain circumstances.

In addition, if we propose to register any of our securities under the Securities Act, including in this offering, certain of our other stockholders are entitled to notice of the registration and to include their registrable shares in the offering. If the managing underwriter determines that marketing factors require a limitation on the number of shares to be underwritten, the managing underwriters may limit or exclude from such underwriting the registerable securities and other securities of these stockholders. If we are so advised by the managing underwriter, then all securities other than registerable securities shall first be excluded from the registration. In no event, however, will the amount of stockholders' securities to be included in the offering be reduced below 30% of the total securities in the offering. We are required to bear substantially all costs incurred in these registrations, other than underwriting discounts and commissions.

Pursuant to the lock-up agreements with the underwriters, holders of greater than 70% of the "registerable securities" under our registration rights agreement have waived their rights to demand registration and participation in this offering under the registration rights agreement until the later of October 30, 2006 or expiration of the lock-up agreements.

### **Agreements with Former Director**

In November, 2004, we entered into an agreement with Mark Pinney, under which we agreed to extend the last date by which Mr. Pinney is entitled to exercise vested stock options previously granted to him to 90 days after he is no longer a director or consultant to us. In addition, he will be entitled to retain certain shares of restricted stock if the vesting requirements for these shares are met within the extended time period. On September 26, 2005, Mr. Pinney was issued 5,000 shares of restricted stock for services rendered as a member of our board of directors from November 1, 2004 through December 31, 2005. Mr. Pinney's shares of restricted stock are otherwise subject to the vesting in the manner described in footnote 3 to the Summary Compensation Table found on page 92.

### **Agreements with Elan**

In September 2003, we entered into the following agreements with Elan, which holds more than 5% of our outstanding common stock:

- We entered into a termination and assignment agreement with Elan. Pursuant to the terms of this agreement, we purchased all of the assets of MSRD, our jointly owned subsidiary.
- We entered into an amended and restated license agreement with Elan. Pursuant to the terms of the license agreement we were granted an exclusive worldwide license to develop, use and sell

Fampridine-SR. We are obligated under the license to make milestone and royalty payments to Elan.

- We entered into a supply agreement with Elan. Subject to certain exceptions in the supply agreement, Elan will be our exclusive supplier of Fampridine-SR.

In July 2004, we entered into the following agreements with Elan, which holds more than 5% of our outstanding common stock:

- We entered into an asset purchase agreement with Elan. Pursuant to the terms of the asset purchase agreement we acquired certain of Elan's rights to Zanaflex Capsules and tablets in the United States.
- We entered into a supply agreement with Elan. Subject to certain exceptions in the supply agreement, Elan will be our exclusive supplier of Zanaflex Capsules.

For a more detailed description of these agreements with Elan see "Business—Collaborations and License Agreements".

## PRINCIPAL STOCKHOLDERS

The following table contains information about the beneficial ownership of our common stock before and after the consummation of this offering for:

- each person, or group of persons, who beneficially owns more than 5% of our capital stock;
- each of our directors;
- each executive officer named in the summary compensation table; and
- all directors and executive officers as a group.

Unless otherwise indicated, the address for each person or entity named below is c/o Acorda Therapeutics, Inc., 15 Skyline Drive, Hawthorne, New York 10532.

Beneficial ownership is determined on the basis of the rules and regulations of the Securities and Exchange Commission. In computing the number of shares beneficially owned by a person and the percentage ownership of that person, shares of common stock subject to options held by that person that are currently exercisable or exercisable within 60 days of the date hereof are deemed outstanding. For the purpose of calculating the amounts set forth in the following table, shares of preferred stock have been deemed to have been converted into shares of common stock. Such shares, however, are not deemed outstanding for the purposes of computing the percentage ownership of any other person. Except as indicated in the footnotes to the following table or pursuant to applicable community property laws, each stockholder named in the table has sole voting and investment power with respect to the shares set forth opposite such stockholder's name. The percentage of beneficial ownership is based on 13,547,122 shares of common stock outstanding on June 30, 2005.

Beneficial Owner	Number of Shares(1)	Percentage of Common Stock Outstanding	
		Before Offering	After Offering(2)
<b>Five Percent Stockholders:</b>			
MPM/BB Bioventure group(3)	1,640,138	12.1%	%
Elan group(4)	997,777	7.4	
Forward Ventures group(5)	873,891	6.5	
Easton Hunt(6)	873,365	6.4	
Cross Atlantic Partners(7)	705,389	5.2	
TVM Life Sciences(8)	705,389	5.2	
MDS/Neuroscience Partners Healthcare(9)	674,297	5.0	
<b>Directors and Executive Officers:</b>			
Ron Cohen, M.D.(10)	880,611	6.5	
Andrew R. Blight, Ph.D.(11)	149,258	1.1	
Mary Fisher(12)	132,678	1.0	
David Lawrence, M.B.A.(13)	71,668	*	
Jane Wasman, J.D.(14)	42,601	*	
John Friedman(15)	873,365	6.4	
Sandra Panem, Ph.D.(16)	711,053	5.2	
Michael Steinmetz, Ph.D.(17)	1,640,138	12.1	
Wise Young, Ph.D., M.D.(18)	22,435	*	
Standish Fleming(19)	873,891	6.5	
Mark Pinney, M.B.A., C.F.A.(20)	174,500	1.3	
Barclay Phillips(21)	543,805	4.0	
Steven Rauscher(22)	7,266	*	
All directors and executive officers as a group (13 persons)(23)	6,123,269	45.2%	%

\* Represents beneficial ownership of less than one percent of the outstanding shares of our common stock.

(1) Reflects preferred stock on an as converted basis.

(2) Assumes no shares are purchased in this offering by the listed persons.

- (3) Includes 1,466,196 shares beneficially owned by BB Bioventures LP, 155,082 shares beneficially owned by MPM Bioventures Parallel Fund, L.P., and 18,860 shares beneficially owned by MPM Asset Management Investors 1998 LLC. The address of MPM/BB Bioventures group is c/o MPM Capital Asset Management, 111 Huntington Avenue, 31<sup>st</sup> Floor, Boston, Massachusetts 02199.
- (4) Includes 278,339 shares of common stock issuable to EIS, upon conversion of convertible promissory notes and 16,868 shares of common stock issuable upon exercise of a warrant to purchase common stock. The address of Elan group is c/o Elan Pharmaceuticals, 875 Third Avenue, 3<sup>rd</sup> Floor, New York, NY 10022.
- (5) Includes 805,597 shares beneficially owned by Forward Ventures IV, L.P. and 68,294 shares beneficially owned by Forward Ventures IV B. L.P. The address of Forward Ventures group is c/o Forward Ventures, 9393 Towne Center Drive, Suite 200, San Diego, California 92121.
- (6) Includes 796,442 shares beneficially owned by Easton Hunt Capital Partners, L.P. and 76,923 shares beneficially owned by Easton Hunt New York. The address of Easton Hunt Capital Partners, L.P. is 767 Third Avenue, New York, New York 10017.
- (7) Includes 588,022 shares beneficially owned by Cross Atlantic Partners IV, K/S and 117,367 shares beneficially owned by Nordea Bank Danmark A/S. The address of Cross Atlantic is c/o Cross Atlantic Partners, Inc., 551 Madison Ave., New York, NY 10022. Cross Atlantic Partners has voting and dispository authority over the shares owned by Nordea Bank. Dr. Panem is a partner of Cross Atlantic Partners IV, K/S and exercises investment and voting power over these shares. Dr. Panem disclaims beneficial ownership of these shares.
- (8) The address of TVM Life Sciences is c/o TVM Management Corporation, 101 Arch Street, Boston, MA 02110.
- (9) Includes 162,307 shares beneficially owned by MDS Life Sciences Technology Fund Limited Partnership, 38,375 shares beneficially owned by MDS Life Sciences Technology Fund USA, L.P., 28,165 shares beneficially owned by MDS Life Sciences Technology Barbados Investment Trust, 364,312 shares beneficially owned by Neuroscience Partners Limited Partnership, 36,223 shares beneficially owned by MDS Capital Corp. and 44,915 shares beneficially owned by SC Biotechnology Development Fund. The address for MDS/Neuroscience Partners Healthcare is c/o MDS Capital Corp., 100 International Blvd., Toronto, Ontario M9W6J6.
- (10) Includes 96,154 shares of common stock, 11,440 shares of preferred stock, 664,523 shares of common stock issuable upon exercise of stock options and 108,494 restricted shares.
- (11) Includes 1,602 shares of common stock, 107,078 shares of common stock issuable upon exercise of stock options and 40,578 restricted shares.
- (12) Includes 67,165 shares of common stock issuable upon exercise of stock options and 65,513 restricted shares.
- (13) Includes 44,905 shares of common stock issuable upon exercise of stock options and 26,763 restricted shares.
- (14) Includes 10,261 shares of common stock issuable upon exercise of stock options and 32,340 restricted shares.
- (15) Includes 796,442 shares beneficially owned by Easton Hunt Capital Partners, L.P. and 76,923 shares beneficially owned by Easton Hunt New York. Mr. Friedman is a founder and principal of Easton Hunt Capital Partners, L.P. and exercises investment and voting power over these shares. Mr. Friedman disclaims beneficial ownership of these shares.
- (16) Includes 4,034 shares of common stock issuable upon exercise of stock options, 1,629 shares of Series H Preferred, and 588,022 shares beneficially owned by Cross Atlantic Partners IV, K/S and 117,368 shares beneficially owned by Nordea Bank Danmark A/S. Cross Atlantic Partners has voting and dispository authority over the shares owned by Nordea Bank. Dr. Panem is a partner of Cross Atlantic Partners and exercises investment and voting power over these shares. Dr. Panem disclaims beneficial ownership of these shares.
- (17) Includes 1,466,196 shares beneficially owned by BB Bioventures LP, 155,082 shares beneficially owned by MPM Bioventures Parallel Fund, L.P. and 18,860 shares beneficially owned by MPM Asset Management Investors 1998 LLC. Dr. Steinmetz is a general partner of MPM Capital Asset Management and exercises investment and voting power over these shares. Dr. Steinmetz disclaims beneficial ownership of these shares.
- (18) Includes 5,769 shares of common stock issuable upon exercise of stock options, 3,846 restricted shares and 12,820 shares of common stock.
- (19) Includes 805,597 shares beneficially owned by Forward Ventures IV, L.P. and 68,294 shares beneficially owned by Forward Ventures IV, B. L.P. Mr. Fleming is a co-founder and partner of Forward Ventures and exercises investment and voting power over these shares. Mr. Fleming disclaims beneficial ownership of these shares.
- (20) Includes 144,812 shares of common stock issuable upon exercise of stock options, 15,715 restricted shares and 13,973 shares of common stock.
- (21) Includes 135,949 shares beneficially owned by Vector Later-Stage Equity Fund II, L.P. and 407,856 shares beneficially owned by Vector Later-Stage Equity Fund II (QP), L.P. Mr. Phillips is a Managing Director of Vector Fund Management and exercises investment and voting power over these shares. Mr. Phillips disclaims beneficial ownership of these shares. The address of Vector Fund Management is 1751 Lake Cook Road, Suite 350, Deerfield, IL 60015.
- (22) Includes 7,266 shares of common stock issuable upon exercise of stock options.
- (23) Includes 1,055,813 shares of common stock issuable upon exercise of stock options.

## **DESCRIPTION OF CAPITAL STOCK**

The following is a description of the material terms of our amended and restated certificate of incorporation and bylaws as each is anticipated to be in effect immediately following the closing of this offering and the filing of our amended and restated certificate of incorporation. We refer you to our amended and restated certificate of incorporation and bylaws, copies of which will be filed as exhibits to the registration statement of which this prospectus forms a part.

### **Authorized Capitalization**

On September 18, 2005, our Board of Directors approved a 1-for-1.3 reverse stock split, which will become effective immediately prior to the effective date of this registration statement. All references to common stock, common shares outstanding, average number of common shares outstanding, per share amounts, options and warrants and Elan notes payable in this registration statement have been restated to reflect the 1-for-1.3 common stock reverse split on a retroactive basis.

As of June 30, 2005, our authorized capital stock consisted of (i) 260,000,000 shares of common stock, with a par value of \$0.001 per share, of which 208,766 shares were issued and outstanding, and (ii) 141,754,865 shares of preferred stock, with a par value of \$0.001 per share, of which 106,472,961 shares are issued and outstanding. Immediately following the closing of this offering and the filing of our amended and restated certificate of incorporation, our authorized capital stock will consist of 80,000,000 shares of common stock, with a par value of \$0.001 per share and 20,000,000 shares of preferred stock, with a par value of \$0.001 per share. As of the consummation of this offering, all of the outstanding shares of preferred stock will automatically convert into 13,338,356 shares of common stock. After giving effect to this conversion, we expect there to be \_\_\_\_\_ shares of common stock issued and outstanding (or \_\_\_\_\_ shares of common stock if the underwriter exercises its over-allotment option in full), and no shares of preferred stock issued and outstanding.

### **Common Stock**

#### ***Voting Rights***

Holders of common stock are entitled to one vote per share on all matters submitted for action by the stockholders. The holders of common stock do not have cumulative voting rights in the election of directors. Accordingly, the holders of more than 50% of the shares of common stock can, if they choose to do so, elect all the directors. In such event, the holders of the remaining shares of common stock will not be able to elect any directors.

#### ***Dividend Rights***

Holders of common stock are entitled to receive ratably dividends if, as and when dividends are declared from time to time by our board of directors out of funds legally available for that purpose, after payment of dividends required to be paid on outstanding preferred stock, if any. Our secured term loan imposes restrictions on our ability to declare dividends on our common stock.

#### ***Liquidation Rights***

Upon our liquidation, dissolution or winding up, any business combination or a sale or disposition of all or substantially all of our assets, the holders of common stock are entitled to receive ratably the assets available for distribution to the stockholders after payment of liabilities and accumulated and unpaid dividends and liquidation preferences on outstanding preferred stock, if any.

## **Other Matters**

Holders of common stock have no preemptive rights and are not subject to further calls or assessment by us. There are no redemption or sinking fund provisions applicable to our common stock. All outstanding shares of our common stock, including the shares of common stock offered in this offering, are fully paid and non-assessable.

## **Preferred Stock**

Our amended and restated certificate of incorporation authorizes our board of directors to establish one or more series of up to 20,000,000 shares of preferred stock. Unless required by law or by any stock exchange on which our common stock is listed, the authorized shares of preferred stock will be available for issuance without further action by our stockholders. Our board of directors is able to determine, with respect to any series of preferred stock, the terms and rights of that series including:

- the designation of the series;
- the number of shares of the series, which our board may, except where otherwise provided in the preferred stock designation, increase or decrease, but not below the number of shares then outstanding;
- whether dividends, if any, will be cumulative or non-cumulative and the dividend rate of the series;
- the dates at which dividends, if any, will be payable;
- the redemption rights and price or prices, if any, for shares of the series;
- the amounts payable on shares of the series in the event of any voluntary or involuntary liquidation, dissolution or winding-up of the affairs of our company;
- whether the shares of the series will be convertible into shares of any other class or series, or any other security, of our company or any other corporation, and, if so, the specification of the other class or series or other security, the conversion price or prices or rate or rates, any rate adjustments, the date or dates as of which the shares will be convertible and all other terms and conditions upon which the conversion may be made;
- any other preferences and relative participating, optional or other special rights, and any qualifications, limitations or restrictions on such rights; and
- the voting rights, if any, of the holders of the series.

## **Restricted Stock**

As of June 30, 2005, we had 749,176 shares of restricted stock outstanding.

## **Warrants**

As of June 30, 2005, we had outstanding warrants to purchase 50,202 shares of common stock at a weighted average exercise price of \$16.54 per share.

## **Stock Options**

As of June 30, 2005, 1,189,055 shares of common stock are issuable upon the exercise of outstanding stock options to purchase our common stock. After this offering, we intend to file a registration statement on Form S-8 to register the shares of common stock reserved for issuance upon exercise of outstanding options. The registration statement is expected to be filed and become effective approximately six months after the closing of this offering. Accordingly, shares registered under the

registration statement will be available for sale in the open market without restriction, except with respect to Rule 144 volume limitations that apply to our affiliates.

### **Convertible Promissory Notes**

In January 1997, EIS loaned us an aggregate of \$7.5 million pursuant to two promissory notes that are convertible into 278,339 shares of our common stock.

### **Registration Rights**

Pursuant to an amended and restated registration rights agreement between us and certain of our stockholders dated as of March 3, 2004, holders of an aggregate of 13,338,356 shares of our common stock have demand and piggy-back registration rights. The demand rights may be exercised by holders of 30% of the registrable securities at any time after completion of this offering. Additionally, if at any time we propose to register our common stock under the Securities Act for our own account or the account of any of our stockholders or both, the stockholders party to the registration rights agreement are entitled to notice of the registration and to include registrable shares in the offering, provided that the underwriters of that offering do not limit the number of shares included in the registration. In no event, however, will the amount of stockholders' securities to be included in the offering be reduced below 30% of the total securities in the offering. We are required to bear substantially all costs incurred in these registrations, other than underwriting discounts and commissions. The registration rights described above could result in substantial future expenses for us and adversely affect any future equity offering. Pursuant to the lock-up agreements with the underwriters, holders of greater than 70% of the "registrable securities" under our registration rights agreement have waived their rights to demand registration and participation in this offering under the registration rights agreement until the later of October 30, 2006 and expiration of the lock-up agreements. In addition, holders of the requisite amount of registrable securities have waived their rights to registration through the completion of this offering.

### **Authorized but Unissued Capital Stock**

The Delaware General Corporation Law does not require stockholder approval for any issuance of authorized shares. These additional shares may be used for a variety of corporate purposes, including future public offerings, to raise additional capital or to facilitate acquisitions.

One of the effects of the existence of unissued and unreserved common stock or preferred stock may be to enable our board of directors to issue shares to persons friendly to current management, which issuance could render more difficult or discourage an attempt to obtain control of our company by means of a merger, tender offer, proxy contest or otherwise, and thereby protect the continuity of our management and possibly deprive the stockholders of opportunities to sell their shares of common stock at prices higher than prevailing market prices.

### **Delaware Anti-Takeover Statute**

We are subject to Section 203 of the Delaware General Corporation Law. Subject to specific exceptions, Section 203 prohibits a publicly held Delaware corporation from engaging in a "business combination" with an "interested stockholder" for a period of three years after the date of the transaction in which the person became an interested stockholder, unless:

- the "business combination," or the transaction in which the stockholder became an "interested stockholder" is approved by the board of directors prior to the date the "interested stockholder" attained that status;

- upon closing of the transaction that resulted in the stockholder becoming an "interested stockholder," the "interested stockholder" owned at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced (excluding for purposes of determining the voting stock outstanding and not outstanding, voting stock owned by the interested stockholder, those shares owned by persons who are directors and also officers, and employee stock plans in which employee participants do not have the right to determine confidentiality whether shares held subject to the plan will be tendered in a tender or exchange offer); or
- on or subsequent to the date a person became an "interested stockholder," the "business combination" is approved by the board of directors and authorized at an annual or special meeting of stockholders by the affirmative vote of at least two-thirds of the outstanding voting stock that is not owned by the "interested stockholder."

"Business combinations" include mergers, asset sales and other transactions resulting in a financial benefit to the "interested stockholder." Subject to various exceptions, an "interested stockholder" is a person who, together with his or her affiliates and associates, owns, or within three years did own, 15% or more of the corporation's outstanding voting stock. These restrictions could prohibit or delay the accomplishment of mergers or other takeover or change in control attempts with respect to us and, therefore, may discourage attempts to acquire us.

#### **Transfer Agent and Registrar**

is the transfer agent and registrar for our common stock.

#### **Listing**

We will apply to list our common stock on The Nasdaq National Market, subject to official notice of issuance, under the symbol "ACOR."

## **SHARES ELIGIBLE FOR FUTURE SALE**

Prior to this offering, there has been no market for our common stock. Upon completion of this offering, we will have outstanding an aggregate of        million shares of common stock, and if the underwriters exercise their over-allotment option in full, we will have outstanding an aggregate of        million shares of common stock. Of these shares, the shares sold in this offering will be freely tradable without restriction or further registration under the Securities Act, except that any shares purchased in the offering by our affiliates, as that term is defined in Rule 144 of the Securities Act, may generally only be sold in compliance with the limitations of Rule 144 described below. The remaining        million shares of our common stock outstanding will be "restricted securities," as that term is defined under Rule 144 under the Securities Act. Restricted securities may be sold in the public market only if registered or if they qualify for an exemption from registration under Rule 144 or 144(k) under the Securities Act, which are summarized below.

Sales of substantial amounts of our common stock in the public market could put downward pressure on the market price of our common stock. We cannot estimate the number of shares of common stock that may be sold by third parties in the future because such sales will depend on market prices, the circumstances of sellers and other factors.

### **Rule 144**

In general, under Rule 144 as currently in effect, beginning 90 days after the date of this prospectus, a person or persons whose shares are aggregated, who has beneficially owned restricted shares for at least one year, including persons who may be deemed to be our "affiliates," would be entitled to sell within any three-month period a number of shares that does not exceed the greater of:

- 1% of the then outstanding shares of common stock, which is approximately        shares as of the date of this prospectus; and
- the average weekly trading volume on The Nasdaq National Market during the four calendar weeks preceding each such sale, subject to restrictions.

Sales under Rule 144 are also subject to manner of sale provisions and notice requirements and to the availability of current public information about us.

### **Rule 144(k)**

In addition, under Rule 144(k), a person who is not and has not been our affiliate at any time during the 90 days preceding a sale and at least two years have elapsed since the shares were acquired from us or any affiliate of ours, is entitled to sell those shares immediately after the consummation of this offering without regard to the manner of sale, public information, volume limitation or notice requirements of Rule 144.

### **Lock-up Agreements**

We, our directors and executive officers and substantially all of our stockholders and option holders have entered into lock-up agreements with the underwriters. Under these agreements, subject to exceptions, we may not issue any new shares of common stock, and those holders of stock and options may not, directly or indirectly, sell, offer, contract or grant any option to sell, pledge, transfer or otherwise dispose of or hedge any common securities convertible into or exchangeable for shares of common stock, or publicly announce the intention to do any of the foregoing, without the prior written consent of Banc of America Securities LLC, for a period of 180 days from the date of this prospectus related to this offering, subject to a potential extension of up to an additional 34 days under certain circumstances. This consent may be given at any time without public notice. In addition, during this period, we have also agreed not to file any registration statement for any shares of our common stock.

without the prior written consent of Banc of America Securities LLC. Pursuant to the lock-up agreements holders of greater than 70% of the "registerable securities" under our registration rights agreement have also agreed not to make any demand for, or exercise any right to registration of any shares of common stock or any securities convertible into or exercisable or exchangeable for common stock, without the prior written consent of Banc of America Securities LLC.

### **Registration Rights**

Following the completion of this offering, holders of an aggregate of 13,338,356 shares of our common stock will be entitled to certain rights with respect to the registration of their shares under the Securities Act. See "Description of Capital Stock—Registration Rights." Registration of their shares under the Securities Act would result in these shares becoming freely tradable without restriction under the Securities Act immediately upon the effectiveness of the registration.

## **CERTAIN UNITED STATES FEDERAL INCOME AND ESTATE TAX CONSEQUENCES TO NON-U.S. HOLDERS**

The following discussion is a summary of certain U.S. federal income and estate tax consequences of the purchase, ownership and disposition of our common stock as of the date hereof. Except where noted, this summary deals only with common stock that is held as a capital asset by a non-U.S. holder.

A "non-U.S. holder" means a beneficial owner of our common stock (other than a partnership) that is not, for U.S. federal income tax purposes, any of the following:

- an individual citizen or resident of the United States;
- a corporation (or any other entity treated as a corporation for U.S. federal income tax purposes) created or organized in or under the laws of the United States, any state thereof or the District of Columbia;
- an estate the income of which is subject to U.S. federal income taxation regardless of its source; or
- a trust if it (1) is subject to the primary supervision of a court within the United States and one or more U.S. persons have the authority to control all substantial decisions of the trust or (2) has a valid election in effect under applicable U.S. Treasury regulations to be treated as a U.S. person.

This summary is based upon provisions of the Code and regulations, rulings and judicial decisions as of the date hereof. Those authorities may be changed, perhaps retroactively, so as to result in U.S. federal income and estate tax consequences different from those summarized below. This summary does not address all aspects of U.S. federal income and estate taxes and does not deal with foreign, state, local or other tax considerations that may be relevant to non-U.S. holders in light of their personal circumstances. In addition, it does not represent a description of the U.S. federal income and estate tax consequences applicable to you if you are subject to special treatment under the U.S. federal income tax laws (including if you are a U.S. expatriate, "controlled foreign corporation," "passive foreign investment company," corporation that accumulates earnings to avoid U.S. federal income tax, a tax exempt organization, a bank, an insurance company, a dealer in securities, a person that holds our common stock as part of a "straddle," "hedge," "conversion transaction," or other integrated transaction, a pass through entity or an investor in a pass-through entity). We cannot assure you that a change in law will not alter significantly the tax considerations that we describe in this summary.

If a partnership holds our common stock, the tax treatment of a partner will generally depend upon the status of the partner and the activities of the partnership. If you are a partner of a partnership holding our common stock, you should consult your tax advisors. In this summary, "partnership" includes any entity treated as a partnership and "partner" includes any person treated as a partner for U.S. federal income tax purposes.

**If you are considering the purchase of our common stock, you should consult your own tax advisors concerning the particular U.S. federal income and estate tax consequences to you of the ownership of our common stock, as well as the consequences to you arising under the laws of any other taxing jurisdiction .**

### **Dividends**

We do not currently anticipate paying dividends on our common stock. See "Dividend Policy" above. If we were to pay dividends in the future, dividends paid to a non-U.S. holder of our common stock generally will be subject to withholding of U.S. federal income tax at a 30% rate or such lower rate as may be specified by an applicable income tax treaty. However, dividends that are effectively connected with the conduct of a trade or business by the non-U.S. holder within the United States (and, where a tax treaty applies, are attributable to a U.S. permanent establishment of the non-U.S.

holder) are not subject to the withholding tax, provided certain certification and disclosure requirements are satisfied. Instead, such dividends are subject to U.S. federal income tax on a net income basis in the same manner as if the non-U.S. holder were a U.S. person as defined under the Code. Any such effectively connected dividends received by a foreign corporation may be subject to an additional "branch profits tax" at a 30% rate or such lower rate as may be specified by an applicable income tax treaty.

A non-U.S. holder of our common stock who wishes to claim the benefit of an applicable treaty rate for dividends will be required to complete Internal Revenue Service Form W-8BEN (or other applicable form) and certify under penalty of perjury that such holder is eligible for benefits under the applicable treaty. Special certification and other requirements apply to certain non-U.S. holders that are pass-through entities rather than corporations or individuals. In addition, Treasury regulations provide special procedures for payments of dividends through certain intermediaries.

A non-U.S. holder of our common stock eligible for a reduced rate of U.S. withholding tax pursuant to an income tax treaty may obtain a refund of any excess amounts withheld by filing an appropriate claim for refund with the Internal Revenue Service.

### **Gain on Disposition of Common Stock**

Any gain realized on the disposition of our common stock generally will not be subject to U.S. federal income tax unless:

- the gain is effectively connected with a trade or business of the non-U.S. holder in the United States (and, if required by an applicable income tax treaty, is attributable to a U.S. permanent establishment of the non-U.S. holder);
- the non-U.S. holder is an individual who is present in the United States for 183 days or more in the taxable year of that disposition, and certain other conditions are met; or
- we are or have been a "United States real property holding corporation" or USRPHC for U.S. federal income tax purposes and certain other conditions are met.

An individual non-U.S. holder described in the first bullet point immediately above will be subject to tax on the net gain derived from the sale under regular graduated U.S. federal income tax rates. An individual non-U.S. holder described in the second bullet point immediately above will be subject to a flat 30% tax on the gain derived from the sale, which may be offset by U.S. source capital losses, even though the individual is not considered a resident of the United States. If a non-U.S. holder that is a foreign corporation falls under the first bullet point immediately above, it will be subject to tax on its net gain in the same manner as if it were a U.S. person as defined under the Code and, in addition, may be subject to the branch profits tax equal to 30% of its effectively connected earnings and profits or at such lower rate as may be specified by an applicable income tax treaty.

We believe we are not and do not anticipate becoming a USRPHC for U.S. federal income tax purposes, however no assurances can be provided that we will not be a USRPHC in the future.

### **U.S. Federal Estate Tax**

Common stock owned or treated as owned by an individual who is not a citizen or resident of the United States, as specifically defined for U.S. estate tax purposes, at the time of death will be included in such holder's gross estate for U.S. federal estate tax purposes, and may be subject to U.S. federal estate tax unless an applicable estate tax treaty provides otherwise.

## **Information Reporting and Backup Withholding**

We must report annually to the Internal Revenue Service and to each non-U.S. holder the amount of dividends paid to such holder and the tax withheld with respect to such dividends, regardless of whether withholding was required. Copies of the information returns reporting such dividends and withholding may also be made available to the tax authorities in the country in which the non-U.S. holder resides under the provisions of an applicable income tax treaty.

A non-U.S. holder will be subject to backup withholding for dividends paid to such holder unless such holder certifies under penalty of perjury that it is a non-U.S. holder (and the payor does not have actual knowledge or reason to know that such holder is a U.S. person as defined under the Code), or such holder otherwise establishes an exemption.

Information reporting and, depending on the circumstances, backup withholding will apply to the proceeds of a sale of our common stock within the United States or conducted through certain U.S.-related financial intermediaries, unless the beneficial owner certifies under penalty of perjury that it is a non-U.S. holder (and the payor does not have actual knowledge or reason to know that the beneficial owner is a U.S. person as defined under the Code) or such owner otherwise establishes an exemption. Certain shareholders, including all corporations, are exempt from the backup withholding rules.

Backup withholding is not an additional tax. Any amounts withheld under the backup withholding rules may be allowed as a refund or a credit against a non-U.S. holder's U.S. federal income tax liability provided the required information is furnished to the Internal Revenue Service.

## UNDERWRITING

We are offering the shares of common stock described in this prospectus through a number of underwriters. Banc of America Securities LLC, Lazard Capital Markets LLC, Piper Jaffray & Co. and SG Cowen & Co., LLC, are the representatives of the underwriters. We have entered into a firm commitment underwriting agreement with the representatives. Subject to the terms and conditions of the underwriting agreement, we have agreed to sell to the underwriters, and each underwriter has agreed to purchase, the number of shares of common stock listed next to its name in the following table:

Underwriter	Number of Shares
Banc of America Securities LLC	
Lazard Capital Markets LLC	
Piper Jaffray & Co.	
SG Cowen & Co., LLC	
<b>Total</b>	<b></b>

The underwriting agreement is subject to a number of terms and conditions and provides that the underwriters must buy all of the shares if they buy any of them. The underwriters will sell the shares to the public when and if the underwriters buy the shares from us.

The underwriters initially will offer the shares to the public at the price specified on the cover page of this prospectus. The underwriters may allow a concession of not more than \$        per share to selected dealers. The underwriters may also allow, and those dealers may reallow, a concession of not more than \$        per share to some other dealers. If all the shares are not sold at the public offering price, the underwriters may change the public offering price and the other selling terms. Our common stock is offered subject to a number of conditions, including:

- receipt and acceptance of the common stock by the underwriters; and
- the underwriters' right to reject orders in whole or in part.

*Over-Allotment Options.* We have granted the underwriters an over-allotment option to buy up to        additional shares of our common stock at the same price per share as they are paying for the shares shown in the table below. These additional shares would cover sales of shares by the underwriters that exceed the total number of shares shown in the table above. The underwriters may exercise this option at any time within 30 days after the date of this prospectus. To the extent that the underwriters exercise this option, each underwriter will purchase additional shares from us in approximately the same proportion as it purchased the shares shown in the table above. If purchased, the additional shares will be sold by the underwriters on the same terms as those on which the other shares are sold.

*Discount and Commissions.* The following table shows the per share and total underwriting discounts and commissions to be paid to the underwriters by us. These amounts are shown assuming no exercise and full exercise of the underwriters' option to purchase additional shares.

We estimate that the expenses of the offering to be paid by us, not including the underwriting discounts and commissions, will be approximately \$ .

	Paid by Us	
	No Exercise	Full Exercise
Per share	\$	\$
Total	\$	\$

***Listing.*** We will apply to have our common stock included for quotation on the NASDAQ National Market under the symbol "ACOR."

***Stabilization.*** In connection with this offering, the underwriters may engage in activities that stabilize, maintain or otherwise affect the price of our common stock, including:

- stabilizing transactions;
- short sales;
- syndicate covering transactions;
- imposition of penalty bids; and
- purchases to cover positions created by short sales.

Stabilizing transactions consist of bids or purchases made for the purpose of preventing or retarding a decline in the market price of our common stock while this offering is in progress. Stabilizing transactions may include making short sales of our common stock, which involves the sale by the underwriters of a greater number of shares of common stock than they are required to purchase in this offering, and purchasing shares of common stock from us or in the open market to cover positions created by short sales. Short sales may be "covered" shorts, which are short positions in an amount not greater than the underwriters' over-allotment option referred to above, or may be "naked" shorts, which are short positions in excess of that amount. Syndicate covering transactions involve purchases of our common stock in the open market after the distribution has been completed in order to cover syndicate short positions.

The underwriters may close out any covered short position either by exercising their over-allotment option, in whole or in part, or by purchasing shares in the open market. In making this determination, the underwriters will consider, among other things, the price of shares available for purchase in the open market compared to the price at which the underwriters may purchase shares pursuant to the over-allotment option.

A naked short position is more likely to be created if the underwriters are concerned that there may be downward pressure on the price of the common stock in the open market that could adversely affect investors who purchased in this offering. To the extent that the underwriters create a naked short position, they will purchase shares in the open market to cover the position.

The representatives also may impose a penalty bid on underwriters and dealers participating in the offering. This means that the representatives may reclaim from any syndicate members or other dealers participating in the offering the underwriting discounts on shares sold by them and purchased by the representatives in stabilizing or short covering transactions.

These activities may have the effect of raising or maintaining the market price of our common stock or preventing or retarding a decline in the market price of our common stock. As a result of these activities, the price of our common stock may be higher than the price that otherwise might exist in the open market. If the underwriters commence these activities, they may discontinue them at any

time. The underwriters may carry out these transactions on the Nasdaq National Market, in the over-the-counter market or otherwise.

The underwriters have informed us that they do not expect to make sales to accounts over which they exercise discretionary authority in excess of 5% of the shares of common stock being offered.

*IPO Pricing.* Prior to this offering, there has been no public market for our common stock. The initial public offering price will be negotiated between us and the representatives of the underwriters. Among the factors to be considered in these negotiations are:

- the history of, and prospects for, our company and the industry in which we compete;
- our past and present financial performance;
- an assessment of our management;
- the present state of our development;
- the prospects for our future earnings;
- the prevailing conditions of the applicable United States securities market at the time of this offering;
- market valuations of publicly traded companies that we and the representatives of the underwriters believe to be comparable to us; and
- other factors deemed relevant.

*Lock-up Agreement.* We, our executive officers and directors and substantially all of our stockholders have entered into or will, prior to the completion of this offering, enter into lock-up agreements with the underwriters. Under these agreements, subject to exceptions, we may not issue any new shares of common stock, and those holders of stock and options may not, directly or indirectly, sell, offer, contract or grant any option to sell, pledge, transfer or otherwise dispose of or hedge any common securities convertible into or exchangeable for shares of common stock, or publicly announce the intention to do any of the foregoing, without the prior written consent of Banc of America Securities LLC for a period of 180 days from the date of this prospectus related to this offering, subject to a potential extension of up to an additional 34 days under certain circumstances. This consent may be given at any time without public notice. In addition, during this period, we have also agreed not to file any registration statement for any shares of our common stock without the prior written consent of Banc of America Securities LLC. Pursuant to the lock-up agreements holders of greater than 70% of the "registerable securities" under our registration rights agreement have also agreed not to make any demand for, or exercise any right to registration of any shares of common stock or any securities convertible into or exercisable or exchangeable for common stock, without the prior written consent of Banc of America Securities LLC.

*Directed Share Program.* At our request, the underwriters have reserved for sale to our directors, employees, business associates and related parties at the initial public offering price up to 5% of the shares being offered by this prospectus. The sale of the reserved shares to these purchasers will be made by Banc of America Securities LLC. We do not know if our directors, employees, business associates and related parties will choose to purchase all or any portion of the reserved shares, but any purchases they do make will reduce the number of shares available to the general public. If all of these reserved shares are not purchased, the underwriters will offer the remainder to the general public on the same terms as the other shares offered by this prospectus.

*Indemnification.* We will indemnify the underwriters against some liabilities, including liabilities under the Securities Act. If we are unable to provide this indemnification, we will contribute to payments the underwriters may be required to make in respect of those liabilities.

The underwriters and their affiliates have provided, and may in the future provide, various investment banking, commercial banking and other financial services for us.

### **Compliance with Non-U.S. Laws and Regulations**

Each underwriter intends to comply with all applicable laws and regulations in each jurisdiction in which it acquires, offers, sells or delivers shares of our common stock or has in its possession or distributes the prospectus.

#### ***European Economic Area***

In relation to each Member State of the European Economic Area which has implemented the Prospectus Directive (each, a Relevant Member State), with effect from and including the date on which the Prospectus Directive is implemented in that Relevant Member State (the Relevant Implementation Date) an offer of shares to the public may not be made in that Relevant Member State prior to the publication of a prospectus in relation to shares which has been approved by the competent authority in that Relevant Member State or, where appropriate, approved in another Relevant Member State and notified to the competent authority in that Relevant Member State, all in accordance with the Prospectus Directive, except that it may, with effect from and including the Relevant Implementation Date, make an offer of shares to the public in that Relevant Member State at any time:

- to legal entities which are authorised or regulated to operate in the financial markets or, if not so authorised or regulated, whose corporate purpose is solely to invest in securities;
- to any legal entity which has two or more of (1) an average of at least 250 employees during the last financial year; (2) a total balance sheet of more than €43,000,000 and (3) an annual net turnover of more than €50,000,000, as shown in its last annual or consolidated accounts; or
- in any other circumstances which do not require the publication by the Issuer of a prospectus pursuant to Article 3 of the Prospectus Directive

For the purposes of this provision, the expression an "offer of shares to the public" in relation to any shares in any Relevant Member State means the communication in any form and by any means of sufficient information on the terms of the offer and the shares to be offered so as to enable an investor to decide to purchase or subscribe the shares, as the same may be varied in that Member State by any measure implementing the Prospectus Directive in that Member State and the expression Prospectus Directive means Directive 2003/71/EC and includes any relevant implementing measure in each Relevant Member State.

#### ***France***

No prospectus (including any amendment, supplement or replacement thereto) has been prepared in connection with the offering of the shares that has been approved by the *Autorité des marchés financiers* or by the competent authority of another State that is a contracting party to the Agreement on the European Economic Area and notified to the *Autorité des marchés financiers*; no shares have been offered or sold and will be offered or sold, directly or indirectly, to the public in France except to permitted investors ("Permitted Investors") consisting of persons licensed to provide the investment service of portfolio management for the account of third parties, qualified investors (*investisseurs qualifiés*) acting for their own account and/or corporate investors meeting one of the four criteria provided in Article 1 of Decree N° 2004-1019 of September 28, 2004 and belonging to a limited circle of investors (*cercle restreint d'investisseurs*) acting for their own account, with "qualified investors" and "limited circle of investors" having the meaning ascribed to them in Article L. 411-2 of the French *Code Monétaire et Financier* and applicable regulations thereunder; none of the prospectus supplement,

the accompanying prospectus, or any other materials related to the offering or information contained therein relating to the shares has been released, issued or distributed to the public in France except to Permitted Investors; and the direct or indirect resale to the public in France of any shares acquired by any Permitted Investors may be made only as provided by articles L. 412-1 and L. 621-8 of the French *Code Monétaire et Financier* and applicable regulations thereunder.

### **United Kingdom**

Each underwriter acknowledges and agrees that:

- it is a person whose ordinary activities involve it in acquiring, holding, managing or disposing of investments (as principal or agent) for the purposes of its business and (ii) it has not offered or sold and will not offer or sell any shares other than to persons whose ordinary activities involve them in acquiring, holding, managing or disposing of investments (as principal or as agent) for the purposes of their businesses or who it is reasonable to expect will acquire, hold, manage or dispose of investments (as principal or agent) for the purposes of their businesses where the issue of the shares would otherwise constitute a contravention of Section 19 of the Financial Services and Markets Act 2000 (the "FSMA") by the issuer;
- it has only communicated or caused to be communicated and will only communicate or cause to be communicated an invitation or inducement to engage in investment activity (within the meaning of Section 21 of the FSMA) received by it in connection with the issue or sale of the shares in circumstances in which Section 21(1) of the FSMA does not apply to the Issuer; and
- it has complied and will comply with all applicable provisions of the FSMA with respect to anything done by it in relation to the shares in, from or otherwise involving the United Kingdom.

This document is only being distributed to and is only directed at (i) persons who are outside the United Kingdom or (ii) to investment professionals falling within Article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (the "Order") or (iii) high net worth entities, and other persons to whom it may lawfully be communicated, falling within Article 49(2)(a) to (d) of the Order (all such persons together being referred to as "relevant persons"). The shares are only available to, and any invitation, offer or agreement to subscribe, purchase or otherwise acquire such shares will be engaged in only with, relevant persons. Any person who is not a relevant person should not act or rely on this document or any of its contents.

### **Italy**

Each underwriter acknowledges and agrees that the offering of the shares has not been cleared by the Italian Securities Exchange Commission (Commissione Nazionale per le Società e la Borsa, the "CONSOB") pursuant to Italian securities legislation and, accordingly, acknowledges and agrees that the shares may not and will not be offered, sold or delivered, nor may or will copies of the prospectus or any other documents relating to the shares or the prospectus be distributed in Italy other than to professional investors (*investitori professionali*), as defined in Article 31, paragraph 2 of CONSOB Regulation No. 11522 of July 1, 1998, as amended ("Regulation No. 11522") or pursuant to another exemption from the requirements of Articles 94 and seq. of Legislative Decree No. 58 of February 24, 1998 (the "Italian Finance Law") and CONSOB Regulation No. 11971 of May 14, 1999 ("Regulation No. 11971").

Each underwriter acknowledges and agrees that any offer, sale or delivery of the shares or distribution of copies of the prospectus or any other document relating to the shares or the prospectus

in Italy may and will be effected in accordance with all Italian securities, tax, exchange control and other applicable laws and regulations, and, in particular, will be:

- made by an investment firm, bank or financial intermediary permitted to conduct such activities in Italy in accordance with the Legislative Decree No. 385 of September 1, 1993, as amended (the "Italian Banking Law"), Legislative Decree No. 58 of February 24, 1998, as amended, CONSOB Regulation No. 11522 of July 1, 1998, and any other applicable laws and regulations;
- in compliance with Article 129 of the Italian Banking Law and the implementing guidelines of the Bank of Italy; and
- in compliance with any other applicable notification requirement or limitation which may be imposed upon the offer of shares by CONSOB or the Bank of Italy.

Any investor purchasing the shares in this offering is solely responsible for ensuring that any offer or resale of the shares it purchased in this offering occurs in compliance with applicable laws and regulations.

This prospectus and the information contained herein are intended only for the use of its recipient and are not to be distributed to any third party resident or located in Italy for any reason. No person resident or located in Italy other than the original recipients of this document may rely on it or its content.

In addition to the above (which shall continue to apply to the extent not inconsistent with the implementing measures of the Prospectus Directive in Italy), after the implementation of the Prospectus Directive in Italy, the restrictions, acknowledgments and agreements set out under the heading "European Economic Area" above shall apply to Italy.

## **LEGAL MATTERS**

The validity of the issuance of the shares of common stock offered hereby will be passed upon for us by Covington & Burling, New York, New York. Shearman & Sterling LLP, New York, New York, will pass upon certain legal matters in connection with this offering for the underwriters.

## **EXPERTS**

Our consolidated financial statements as of December 31, 2004 and 2003 and for the year ended December 31, 2004, the six month period ended December 31, 2003, and years ended June 30, 2003 and 2002 have been included herein and in the registration statement in reliance upon the report of KPMG LLP, independent registered public accounting firm, appearing elsewhere herein, and upon the authority of said firm as experts in accounting and auditing.

## **WHERE YOU CAN FIND ADDITIONAL INFORMATION**

We have filed with the SEC a registration statement on Form S-1 under the Securities Act with respect to the common stock offered by this prospectus. This prospectus, which is a part of the registration statement, does not include all of the information included in the registration statement. For further information with respect to us and our common stock, reference is made to the registration statement.

We are not currently subject to the informational requirements of the Securities Exchange Act of 1934, or the Exchange Act. As a result of this offering, we will become subject to the informational requirements of the Exchange Act, and, in accordance therewith, will file reports and other information with the SEC. The registration statement, such reports and other information can be inspected and copied at the Public Reference Room of the SEC located at 100 F Street, N.E., Washington D.C. 20549. Copies of such materials, including copies of all or any portion of the registration statement, can be obtained from the Public Reference Room of the SEC at prescribed rates. You can call the SEC at 1-800-SEC-0330 to obtain information on the operation of the Public Reference Room. Such materials may also be accessed electronically by means of the SEC's home page on the Internet ([www.sec.gov](http://www.sec.gov)).

**ACORDA THERAPEUTICS, INC. AND SUBSIDIARY**  
**INDEX TO CONSOLIDATED FINANCIAL STATEMENTS**

	<b>PAGE</b>
Consolidated Financial Statements:	
Report of Independent Registered Public Accounting Firm	F-2
Consolidated Balance Sheets	F-3
Consolidated Statements of Operations	F-5
Consolidated Statements of Stockholders' (Deficit)	F-6
Consolidated Statements of Cash Flows	F-11
Notes to Consolidated Financial Statements	F-12
	F-1

---

THE ACCOMPANYING FINANCIAL STATEMENTS INCLUDE THE EFFECTS OF A REVERSE STOCK SPLIT OF THE COMPANY'S COMMON STOCK APPROVED BY THE COMPANY'S BOARD OF DIRECTORS WHICH WILL BECOME EFFECTIVE IMMEDIATELY PRIOR TO THE EFFECTIVE DATE OF THE FORM S-1 REGISTRATION STATEMENT FILED IN CONNECTION WITH THE COMPANY'S INITIAL PUBLIC OFFERING. THE ABOVE OPINION IS THE FORM WHICH WILL BE SIGNED BY KPMG LLP UPON CONSUMMATION OF THE REVERSE STOCK SPLIT, WHICH IS DESCRIBED IN NOTE (16) OF THE NOTES TO THE FINANCIAL STATEMENTS, AND ASSUMING THAT, FROM OCTOBER 3, 2005 TO THE DATE OF SUCH REVERSE STOCK SPLIT, NO OTHER EVENTS HAVE OCCURRED THAT WOULD AFFECT THE ACCOMPANYING FINANCIAL STATEMENTS AND NOTES THERETO, EXCEPT AS DISCLOSED IN NOTES TO THE FINANCIAL STATEMENTS.

/s/ KPMG LLP

October 3, 2005

**REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

The Board of Directors and Stockholders  
Acorda Therapeutics, Inc.:

We have audited the accompanying consolidated balance sheets of Acorda Therapeutics, Inc. and subsidiary (the Company) as of December 31, 2004 and 2003, and the related consolidated statements of operations, stockholders' (deficit), and cash flows for the year ended December 31, 2004, the six-month period ended December 31, 2003, and years ended June 30, 2003 and 2002. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of the Company as of December 31, 2004 and 2003, and the results of their operations and their cash flows for the year ended December 31, 2004, the six-month period ended December 31, 2003, and years ended June 30, 2003 and 2002, in conformity with U.S. generally accepted accounting principles.

Short Hills, New Jersey  
October 3, 2005, except for note 16  
(as to the effects of a reverse stock split  
which is as of October , 2005)

# ACORDA THERAPEUTICS, INC. AND SUBSIDIARY

## Consolidated Balance Sheets

	December 31,		June 30,
	2003	2004	2005
			(unaudited)
<b>Assets</b>			
Current assets:			
Cash and cash equivalents	\$ 8,965,173	\$ 11,729,112	\$ 3,259,103
Restricted cash	254,078	256,568	259,228
Short-term investments	32,250,263	9,396,677	11,445,855
Trade accounts receivable, net	—	1,922,838	4,130,676
Grant receivable	171,181	141,815	78,633
Prepaid expenses	920,084	827,891	455,909
Finished goods inventory	—	423,200	4,198,062
Other current assets	194,962	241,251	755,126
Total current assets	42,755,741	24,939,352	24,582,592
Property and equipment, net of accumulated depreciation	3,093,154	2,547,014	2,140,611
Intangible Assets, net of accumulated amortization	—	3,386,050	3,220,032
Other assets	111,516	109,234	109,234
Total assets	\$ 45,960,411	\$ 30,981,650	\$ 30,052,469
<b>Liabilities, Mandatorily Redeemable Convertible Preferred Stock and Stockholders' (Deficit)</b>			
Current liabilities:			
Accounts payable	\$ 2,354,131	\$ 1,929,394	\$ 3,197,001
Accounts payable to related party	305,088	—	—
Accrued expenses and other current liabilities	4,349,828	2,890,218	3,760,877
Accrued product returns	—	4,081,910	2,420,756
Deferred grant revenue	48,043	—	—
Deferred product revenue—tablets	—	6,668,491	11,027,470
Deferred product revenue—capsules	—	—	5,386,472
Current portion of notes payable	323,971	301,938	2,161,865
Total current liabilities	7,381,061	15,871,951	27,954,441
Long-term portion of notes payable	446,592	144,654	3,946,424
Other long-term liabilities	—	750,000	—
Long-term convertible notes payable—principal amount, plus accrued interest less unamortized debt discount of \$329,374, \$175,312 and \$109,692 as of December 31, 2003 and 2004 and June 30, 2005 (unaudited) respectively	8,091,412	8,421,996	8,621,958
Mandatorily Redeemable Convertible Preferred Stock:			
Series E convertible preferred stock—\$0.001 par value. Authorized, issued, and outstanding 7,472,612 shares at December 31, 2003 and 2004 and June 30, 2005 (unaudited) (Redemption and liquidation value of \$20,176,052 as of December 31, 2004)	2,449,656	6,396,021	8,363,834
Series I convertible preferred stock—\$0.001 par value. Authorized, issued and outstanding, 10,204,047 shares at December 31, 2003 and 2004 and June 30, 2005 (unaudited) (Redemption and liquidation value of \$39,693,743 as of December 31, 2004)	4,897,447	12,644,040	16,506,774
Series J convertible preferred stock—\$0.001 par value. Authorized, 112,790,246 shares at December 31, 2003 and 2004 and June 30, 2005 (unaudited); issued, and outstanding 112,790,233 shares at December 31, 2003 and 2004 and June 30, 2005 (unaudited) (Redemption and liquidation value of \$64,109,973 as of December 31, 2004)	22,824,094	35,100,482	41,228,036
Series K convertible preferred stock—\$0.001 par value. Authorized, 1,533,330 shares at December 31, 2003 and 2004 and June 30, 2005 (unaudited); issued and outstanding 1,533,327 shares at December 31, 2004 and June 30, 2005 (unaudited) (Redemption and liquidation value of \$12,720,513 at December 31, 2004)	—	12,223,211	12,689,399

Commitments and contingencies			
Stockholders' (deficit):			
Series A convertible preferred stock, \$0.001 par value. Authorized 1,646,068 shares at December 31, 2003 and 2004 and June 30, 2005 (unaudited); issued and outstanding 1,306,068 shares at December 31, 2003 and 2004 and June 30, 2005 (unaudited) (liquidation value of \$1,306,068 as of December 31, 2004)	1,306	1,306	1,306
Series B convertible preferred stock, \$0.001 par value. Authorized 2,250,000 shares at December 31, 2003 and 2004 and June 30, 2005 (unaudited); issued and outstanding 900,000 shares at December 31, 2003 and 2004 and June 30, 2005 (unaudited) (liquidation value of \$1,800,000 as of December 31, 2004)	900	900	900
Series C convertible preferred stock, \$0.001 par value. Authorized, issued, and outstanding 333,333 shares at December 31, 2003 and 2004 and June 30, 2005 (unaudited) (liquidation value of \$999,999 as of December 31, 2004)	333	333	333
Series D convertible preferred stock, \$0.001 par value. Authorized 400,000 shares at December 31, 2003 and 2004 and June 30, 2005 (unaudited); issued and outstanding—none	—	—	—
Series F convertible preferred stock, \$0.001 par value. Authorized, issued, and outstanding 2,300,000 shares at December 31, 2003 and 2004 and June 30, 2005 (unaudited) (liquidation value of \$11,999,100 as of December 31, 2004)	2,300	2,300	2,300
Series G convertible preferred stock, \$0.001 par value. Authorized 1,250,000 shares at December 31, 2003 and 2004 and June 30, 2005 (unaudited); issued and outstanding—none	—	—	—
Series H convertible preferred stock, \$0.001 par value. Authorized, issued, and outstanding 1,575,229 shares at December 31, 2003 and 2004 and June 30, 2005 (unaudited) (liquidation value of \$5,119,494 as of December 31, 2004)	1,575	1,575	1,575
Common stock, \$0.001 par value. Authorized 260,000,000 shares at December 31, 2003 and 2004 and June 30, 2005 (unaudited); issued and outstanding 195,209, 197,569 and 208,766 shares as of December 31, 2003 and 2004 and June 30, 2005 (unaudited), respectively	195	198	209
Additional paid-in capital	127,631,942	111,957,403	101,742,769
Accumulated deficit	(127,770,920)	(172,511,684)	(190,996,392)
Other comprehensive income (loss)	2,518	(23,036)	(11,397)
Total stockholders' (deficit)	(129,851)	(60,570,705)	(89,258,397)
Total liabilities, mandatorily redeemable convertible preferred stock and stockholders' (deficit)	\$ 45,960,411	\$ 30,981,650	\$ 30,052,469

See accompanying Notes to Consolidated Financial Statements

**ACORDA THERAPEUTICS, INC. AND SUBSIDIARY**

**Consolidated Statements of Operations**

	Year ended June 30,		Six-month period ended December 31, 2003	Year ended December 31, 2004	Six-month period ended June 30,	
	2002	2003			(unaudited)	2005
Gross sales—Zanaflex	\$ —	\$ —	\$ —	\$ —	\$ —	\$ 478,183
Less: discounts and allowances	—	—	—	(4,416,691)	—	(844,436)
Net sales	—	—	—	(4,416,691)	—	(366,253)
Grant revenue	131,592	473,588	382,094	479,495	316,551	154,642
Total net revenue	131,592	473,588	382,094	(3,937,196)	316,551	(211,611)
Less: cost of sales	—	—	—	(771,499)	—	(1,401,126)
Gross profit	131,592	473,588	382,094	(4,708,695)	316,551	(1,612,737)
Operating expenses:						
Research and development	11,146,415	17,526,656	16,743,098	21,999,091	13,502,062	7,142,992
Research and development—related party	4,686,671	2,265,233	3,343,681	—	—	—
Sales and marketing	—	—	—	4,661,643	1,652,094	5,534,878
General and administrative	6,636,306	6,387,999	17,068,746	13,397,457	8,069,555	3,933,089
Total operating expenses	22,469,392	26,179,888	37,155,525	40,058,191	23,223,711	16,610,959
Operating loss	(22,337,800)	(25,706,300)	(36,773,431)	(44,766,886)	(22,907,160)	(18,223,696)
Other income (expense):						
Interest and amortization of debt discount expense	—	(77,712)	(37,646)	(385,419)	(207,628)	(519,979)
Interest and amortization of debt discount expense—related party	(407,686)	(368,935)	(184,226)	—	—	—
Interest income	983,876	392,742	276,334	409,118	236,630	257,939
Other income	—	25,903	6,998	2,423	2,423	1,028
Total other income (expense)	576,190	(28,002)	61,460	26,122	31,425	(261,012)
Minority interest—related party	580,467	—	—	—	—	—
Net loss	(21,181,143)	(25,734,302)	(36,711,971)	(44,740,764)	(22,875,735)	(18,484,708)
Beneficial conversion feature, accretion of issuance costs, preferred dividends, and fair value of warrants issued to convertible preferred stockholders	(54,973)	(24,320,031)	(11,984,669)	(24,746,337)	(12,295,470)	(12,209,506)
Net loss allocable to						

Net loss allocable to

common stockholders	\$ (21,236,116)	\$ (50,054,333)	\$ (48,696,640)	\$ (69,487,101)	\$ (35,171,205)	\$ (30,694,214)
Net loss per share allocable to common stockholders—basic and diluted	(\$111.90)	(\$261.38)	(\$252.87)	(\$351.76)	(\$178.17)	(\$152.78)
Weighted average common shares outstanding used in computing net loss per share allocable to common stockholders—basic and diluted	189,786	191,497	192,573	197,541	197,402	200,903

See accompanying Notes to Consolidated Financial Statements

F-5

---

**ACORDA THERAPEUTICS, INC. AND SUBSIDIARY**

**Consolidated Statements of Changes in Stockholders' (Deficit)**

**Stockholders' (deficit)**

	Stockholders' (deficit)												Accumulated Comprehensive Income (Loss)	Total stockholders' (deficit)		
	Series A convertible preferred stock		Series B convertible preferred stock		Series C convertible preferred stock		Series F convertible preferred stock		Series H convertible preferred stock		Common Stock					
	Number of shares	Par value	Additional paid-in capital	Accumulated Deficit												
<b>Balance at June 30, 2001</b>	1,255,000	\$1,255	750,000	\$ 750	—	\$ —	2,300,000	\$2,300	1,575,229	\$1,575	188,152	\$ 188	\$25,096,201	\$ (44,143,504)	\$ (19,041,235)	
Issuance of Series A convertible preferred stock in May 2002, \$1.00 per share	51,068	51	—	—	—	—	—	—	—	—	22,749	—	—	—	22,800	
Issuance of Series B convertible preferred stock in January 2002, \$2.00 per share	—	—	150,000	150	—	—	—	—	—	—	299,850	—	—	—	300,000	
Issuance of Series C convertible preferred stock in February 2002, \$3.00 per share	—	—	—	—	333,333	333	—	—	—	—	999,666	—	—	—	999,999	
Issuance of common stock in September and October 2001 and February 2002, \$4.68 per share	—	—	—	—	—	—	—	—	—	3,381	4	20,615	—	—	—	20,619
Research and development expense for issuance of stock options to nonemployees	—	—	—	—	—	—	—	—	—	—	74,624	—	—	—	74,624	
Compensation expense for issuance of stock options to employees	—	—	—	—	—	—	—	—	—	—	1,331,911	—	—	—	1,331,911	
Accretion of issuance costs related to Series F mandatorily redeemable convertible preferred stock	—	—	—	—	—	—	—	—	—	—	(27,337)	—	—	—	(27,337)	
Accretion of issuance costs related to Series I mandatorily redeemable convertible preferred stock	—	—	—	—	—	—	—	—	—	—	(27,636)	—	—	—	(27,636)	
Research and development expense for issuance of warrants and Series C preferred stock on obtaining Phase II clinical trial approval	—	—	—	—	—	—	—	—	—	—	617,666	—	—	—	617,666	
Net loss	—	—	—	—	—	—	—	—	—	—	(21,181,143)	—	—	—	(21,181,143)	
<b>Balance at June 30, 2002</b>	1,306,068	\$1,306	900,000	\$ 900	333,333	\$ 333	2,300,000	\$2,300	1,575,229	\$1,575	191,533	\$ 192	\$28,408,309	\$ (65,324,647)	\$ (36,909,732)	

See accompanying Notes to Consolidated Financial Statements.



**ACORDA THERAPEUTICS, INC. AND SUBSIDIARY**

**Consolidated Statements of Changes in Stockholders' (Deficit) (continued)**

	Stockholders' (deficit)												Accumulated Comprehensive Income (Loss)	Total stockholders' (deficit)		
	Series A convertible preferred stock		Series B convertible preferred stock		Series C convertible preferred stock		Series F convertible preferred stock		Series H convertible preferred stock		Common Stock					
	Number of shares	Par value	Additional paid-in capital	Accumulated Deficit												
Research and development expense for issuance of stock options to nonemployees	—	—	—	—	—	—	—	—	—	—	(6,539)	—	—	(6,539)		
Compensation expense for issuance of stock options to employees	—	—	—	—	—	—	—	—	—	—	1,580,054	—	—	1,580,054		
Accretion of issuance costs related to Series E, I and J mandatorily redeemable convertible preferred stock	—	—	—	—	—	—	—	—	—	—	(27,337)	—	—	(27,337)		
Accretion of issuance costs related to Series I mandatorily redeemable convertible preferred stock	—	—	—	—	—	—	—	—	—	—	(27,636)	—	—	(27,636)		
Accretion of issuance costs related to Series J mandatorily redeemable convertible preferred stock	—	—	—	—	—	—	—	—	—	—	(10,990)	—	—	(10,990)		
Accrual of preferred dividends of Series J mandatorily redeemable convertible preferred stock	—	—	—	—	—	—	—	—	—	—	(629,895)	—	—	(629,895)		
Beneficial conversion feature for reduction in conversion price	—	—	—	—	—	—	—	—	—	—	80,730,286	—	—	80,730,286		
Deemed dividends on preferred stock for reduction in conversion price, Series A, B, C, F and H	—	—	—	—	—	—	—	—	—	—	(20,860,491)	—	—	(20,860,491)		
Deemed dividends on preferred stock for reduction in conversion price, Series E and I	—	—	—	—	—	—	—	—	—	—	(1,656,854)	—	—	(1,656,854)		
Issuance of preferred stock with beneficial conversion feature, Series J	—	—	—	—	—	—	—	—	—	—	39,994,812	—	—	39,994,812		
Deemed dividends on preferred stock for issuance of preferred stock with beneficial conversion feature, Series J	—	—	—	—	—	—	—	—	—	—	(1,106,828)	—	—	(1,106,828)		
Comprehensive loss -Unrealized loss on investment securities	—	—	—	—	—	—	—	—	—	—	—	(6,078)	—	(6,078)		
Net loss	—	—	—	—	—	—	—	—	—	—	(25,734,302)	—	—	(25,734,302)		

<i>Total Comprehensive loss</i>	(25,740,380)
<b>Balance at June 30, 2003</b>	<b>1,306,068 \$ 1,306 900,000 \$ 900 333,333 \$ 333 2,300,000 \$ 2,300 1,575,229 \$ 1,575 191,533 \$ 192 \$126,386,891 \$ (91,058,949)\$ (6,078)\$ 35,328,470</b>

See accompanying Notes to Consolidated Financial Statements.

**ACORDA THERAPEUTICS, INC. AND SUBSIDIARY**

**Consolidated Statements of Changes in Stockholders' (Deficit) (continued)**

	Stockholders' (deficit)												Accumulated Comprehensive Income (Loss)	Total stockholders' (deficit)		
	Series A convertible preferred stock		Series B convertible preferred stock		Series C convertible preferred stock		Series F convertible preferred stock		Series H convertible preferred stock		Common Stock					
	Number of shares	Par value	Number of shares	Par value	Number of shares	Par value	Number of shares	Par value	Number of shares	Par value	Additional paid-in capital	Accumulated Deficit				
Research and development expense for issuance of stock options to nonemployees	—	—	—	—	—	—	—	—	—	—	8,488	—	—	8,488		
Compensation expense for issuance of stock options to employees	—	—	—	—	—	—	—	—	—	—	13,198,080	—	—	13,198,080		
Exercise of stock options	—	—	—	—	—	—	—	—	3,676	3	23,232	—	—	23,235		
Accretion of issuance costs related to Series E, I and mandatorily redeemable convertible preferred stock	—	—	—	—	—	—	—	—	—	—	(8,188)	—	—	(8,188)		
Accretion of issuance costs related to Series I mandatorily redeemable convertible preferred stock	—	—	—	—	—	—	—	—	—	—	(7,434)	—	—	(7,434)		
Accretion of issuance costs related to Series J mandatorily redeemable convertible preferred stock	—	—	—	—	—	—	—	—	—	—	(32,323)	—	—	(32,323)		
Deemed dividends on preferred stock for reduction in conversion price, Series E and I	—	—	—	—	—	—	—	—	—	—	(5,830,852)	—	—	(5,830,852)		
Accrual of preferred dividends on Series J mandatorily redeemable convertible preferred stock	—	—	—	—	—	—	—	—	—	—	(2,210,688)	—	—	(2,210,688)		
Deemed dividends on preferred stock for issuance of preferred stock with beneficial conversion feature, Series J	—	—	—	—	—	—	—	—	—	—	(3,895,184)	—	—	(3,895,184)		
Fractional share reimbursement liability due to reverse stock split	—	—	—	—	—	—	—	—	—	—	(80)	—	—	(80)		
<b>Comprehensive loss</b>																
Unrealized gain on investment securities	—	—	—	—	—	—	—	—	—	—	—	—	8,596	8,596		
<b>Net loss</b>	—	—	—	—	—	—	—	—	—	—	(36,711,971)	—	—	(36,711,971)		
<b>Total Comprehensive loss</b>													(36,703,375)			
<b>Balance at December 31, 2003</b>	<b>1,306,068</b>	<b>\$1,306</b>	<b>900,000</b>	<b>\$ 900</b>	<b>333,333</b>	<b>\$ 333</b>	<b>2,300,000</b>	<b>\$2,300</b>	<b>1,575,229</b>	<b>\$1,575</b>	<b>195,209</b>	<b>\$ 195</b>	<b>\$127,631,942</b>	<b>\$(127,770,920)</b>		
													<b>2,518</b>	<b>\$(129,851)</b>		

See accompanying Notes to Consolidated Financial Statements.

**ACORDA THERAPEUTICS, INC. AND SUBSIDIARY**

**Consolidated Statements of Changes in Stockholders' (Deficit) (continued)**

	Stockholders' (deficit)												Accumulated Comprehensive Income (Loss)	Total stockholders' equity (deficit)		
	Series A convertible preferred stock		Series B convertible preferred stock		Series C convertible preferred stock		Series F convertible preferred stock		Series H convertible preferred stock		Common Stock					
	Number of shares	Par value	Additional paid-in capital	Accumulated Deficit												
Research and development expense for issuance of stock options to nonemployees	—	—	—	—	—	—	—	—	—	—	15,458	—	—	15,458		
Compensation expense for issuance of stock options to employees	—	—	—	—	—	—	—	—	—	—	6,812,795	—	—	6,812,795		
Compensation expense for issuance of restricted stock to employees	—	—	—	—	—	—	—	—	—	—	2,235,263	—	—	2,235,263		
Exercise of stock options	—	—	—	—	—	—	—	—	2,360	3	8,282	—	—	8,285		
Accretion of issuance costs related to Series E, I, J and K mandatorily redeemable convertible preferred stock	—	—	—	—	—	—	—	—	—	—	(16,376)	—	—	(16,376)		
Accretion of issuance costs related to Series I mandatorily redeemable convertible preferred stock	—	—	—	—	—	—	—	—	—	—	(14,869)	—	—	(14,869)		
Accretion of issuance costs related to Series J mandatorily redeemable convertible preferred stock	—	—	—	—	—	—	—	—	—	—	(64,646)	—	—	(64,646)		
Accretion of issuance costs related to Series K mandatorily redeemable convertible preferred stock	—	—	—	—	—	—	—	—	—	—	(10,332)	—	—	(10,332)		
Accrual of preferred dividends of Series J mandatorily redeemable convertible preferred stock	—	—	—	—	—	—	—	—	—	—	(4,421,377)	—	—	(4,421,377)		
Accrual of preferred dividends of Series K mandatorily redeemable convertible preferred stock	—	—	—	—	—	—	—	—	—	—	(766,664)	—	—	(766,664)		
Deemed dividends on preferred stock for reduction in conversion price, Series E and I	—	—	—	—	—	—	—	—	—	—	(11,661,705)	—	—	(11,661,705)		

Deemed dividends on preferred stock for issuance of preferred stock with beneficial conversion feature, Series J	—	—	—	—	—	—	—	—	—	—	—	(7,790,368)	—	—	(7,790,368)	
<i>Comprehensive loss</i>																
Unrealized loss on investment securities	—	—	—	—	—	—	—	—	—	—	—	(25,554)	—	(25,554)		
Net loss	—	—	—	—	—	—	—	—	—	—	—	(44,740,764)	—	(44,740,764)		
<i>Total Comprehensive loss</i>															(44,766,318)	
<b>Balance at December 31, 2004</b>	<b>1,306,068</b>	<b>\$1,306</b>	<b>900,000</b>	<b>\$ 900</b>	<b>333,333</b>	<b>\$ 333</b>	<b>2,300,000</b>	<b>\$2,300</b>	<b>1,575,229</b>	<b>\$1,575</b>	<b>197,569</b>	<b>\$ 198</b>	<b>\$111,957,403</b>	<b>\$(172,511,684)</b>	<b>\$ (23,036)</b>	<b>\$ (60,570,705)</b>

See accompanying Notes to Consolidated Financial Statements.

**ACORDA THERAPEUTICS, INC. AND SUBSIDIARY**

**Consolidated Statements of Changes in Stockholders' (Deficit) (continued)**

(Unaudited)	Stockholders' (deficit)												Total stockholders' (deficit)		
	Series A convertible preferred stock		Series B convertible preferred stock		Series C convertible preferred stock		Series F convertible preferred stock		Series H convertible preferred stock		Common Stock				
	Number of shares	Par value	Number of shares	Par value											
Research and development expense for issuance of stock options to nonemployees	—	—	—	—	—	—	—	—	—	—	—	172	—	—	172
Compensation expense for issuance of stock options to employees	—	—	—	—	—	—	—	—	—	—	—	1,074,989	—	—	1,074,989
Compensation expense for issuance of restricted stock to employees	—	—	—	—	—	—	—	—	—	—	—	899,274	—	—	899,274
Exercise of stock options	—	—	—	—	—	—	—	—	11,195	15	20,433	—	—	—	20,448
One for one point three reverse stock split	—	—	—	—	—	—	—	—	—	(4)	4	—	—	—	—
Accretion of issuance costs related to Series E, I, J and K mandatorily redeemable convertible preferred stock	—	—	—	—	—	—	—	—	—	—	—	(8,188)	—	—	(8,188)
Accretion of issuance costs related to Series I mandatorily redeemable convertible preferred stock	—	—	—	—	—	—	—	—	—	—	—	(7,435)	—	—	(7,435)
Accretion of issuance costs related to Series J mandatorily redeemable convertible preferred stock	—	—	—	—	—	—	—	—	—	—	—	(32,323)	—	—	(32,323)
Accretion of issuance costs related to Series K mandatorily redeemable convertible preferred stock	—	—	—	—	—	—	—	—	—	—	—	(6,200)	—	—	(6,200)
Accrual of preferred dividends of Series J mandatorily redeemable convertible preferred stock	—	—	—	—	—	—	—	—	—	—	—	(2,210,684)	—	—	(2,210,684)
Accrual of preferred dividends of Series K mandatorily redeemable convertible preferred stock	—	—	—	—	—	—	—	—	—	—	—	(459,998)	—	—	(459,998)
Deemed dividends on preferred stock for reduction in	—	—	—	—	—	—	—	—	—	—	—	(459,998)	—	—	(459,998)

conversion price, Series E and I	—	—	—	—	—	—	—	—	—	—	(5,814,922)	—	—	(5,814,922)	
Deemed dividends on preferred stock for issuance of preferred stock with beneficial conversion feature, Series J	—	—	—	—	—	—	—	—	—	—	(3,884,541)	—	—	(3,884,541)	
Warrants issued to creditor	—	—	—	—	—	—	—	—	—	—	214,785	—	—	214,785	
<i>Comprehensive loss</i>															
Unrealized gain on investment securities	—	—	—	—	—	—	—	—	—	—	—	11,639	11,639		
Net loss	—	—	—	—	—	—	—	—	—	—	(18,484,708)	—	(18,484,708)		
<i>Total Comprehensive loss</i>														(18,473,069)	
<b>Balance at June 30, 2005 (unaudited)</b>	<b>1,306,068</b>	<b>\$1,306</b>	<b>900,000</b>	<b>\$ 900</b>	<b>333,333</b>	<b>\$ 333</b>	<b>2,300,000</b>	<b>\$2,300</b>	<b>1,575,229</b>	<b>\$1,575</b>	<b>208,766</b>	<b>\$ 209</b>	<b>\$101,742,769</b>	<b>\$(190,996,392)\$</b>	<b>(11,397)\$ (89,258,397)</b>

See accompanying Notes to Consolidated Financial Statements.

# ACORDA THERAPEUTICS, INC. AND SUBSIDIARY

## Consolidated Statements of Cash Flows

	Year ended June 30,		Six months ended December 31,		Year ended December 31,		Six months ended June 30,	
	2002	2003	2003	2004	2004	2005	(unaudited)	(unaudited)
<b>Cash flows from operating activities:</b>								
Net loss	\$ (21,181,143)	\$ (25,734,302)	\$ (36,711,971)	\$ (44,740,764)	\$ (22,875,735)	\$ (18,484,708)		
Adjustments to reconcile net loss to net cash used in operating activities:								
Stock compensation expense	1,406,535	1,573,514	13,206,567	9,063,517	5,280,400	1,974,434		
Expensing of warrants and beneficial conversion	617,666	—	—	—	—	—		
Amortization of note discount	257,686	218,935	88,440	154,062	88,260	65,621		
Accretion of note payable	—	—	—	—	—	49,305		
Depreciation and amortization expense	417,479	740,201	445,260	1,191,860	530,661	691,022		
Minority interest—Related party	(580,467)	—	—	—	—	—		
Changes in assets and liabilities:								
Increase in accounts receivable	—	—	—	(1,922,838)	—	(2,207,838)		
Decrease (increase) in grant receivables	50,993	(213,886)	190,426	29,366	(3,809)	63,182		
Decrease (increase) in prepaid expenses and other current assets	84,917	(401,706)	(551,888)	45,904	(171,427)	(141,893)		
Increase in finished goods inventory	—	—	—	(423,200)	—	(3,774,862)		
Decrease in other assets	23,639	28,300	—	2,282	2,281	—		
Increase (decrease) in accounts payable, accrued expenses, other current liabilities	223,984	(200,072)	4,624,205	(1,884,347)	(1,866,640)	2,272,607		
Increase (decrease) in returns liability	—	—	—	4,081,910	—	(1,661,154)		
Increase (decrease) in amounts due to related party	579,983	(592,901)	113,946	(128,566)	(216,645)	—		
Increase (decrease) in deferred grant revenue	—	95,462	(47,419)	(48,043)	(48,043)	—		
Increase in deferred product revenue—tablets	—	—	—	6,668,491	—	(1,282,019)		
Increase in deferred product revenue—capsules	—	—	—	—	—	11,027,470		
Increase (decrease) in royalty payable	—	—	—	750,000	—	(750,000)		
Restricted cash	(6,015)	(3,495)	(1,081)	(2,490)	(1,071)	(2,660)		
Net cash used in operating activities	(18,104,743)	(24,489,950)	(18,643,515)	(27,162,856)	(19,281,768)	(12,161,493)		
<b>Cash flows from investing activities:</b>								
Purchases of property and equipment	(2,230,916)	(747,981)	(590,666)	(531,770)	(274,927)	(118,602)		
Purchases of intangible assets	—	—	—	(3,500,000)	—	—		
Purchases of short-term investments	(2,835,526)	(18,669,923)	(39,602,946)	(17,455,756)	(17,866,882)	(11,367,539)		
Proceeds from maturities of short-term investments	—	9,248,922	19,611,727	40,283,788	25,367,737	9,330,000		
Net cash (used in) provided by investing activities	(5,066,442)	(10,168,982)	(20,581,885)	18,796,262	7,225,928	(2,156,141)		
<b>Cash flows from financing activities:</b>								
Proceeds from issuance of preferred stock, net of issuance costs	1,322,799	54,933,001	—	11,446,219	11,446,219	—		
Funding received from minority owner	757,566	110,374	—	—	—	—		
Proceeds from issuance of common stock	20,619	—	23,235	8,285	8,285	20,448		
Proceeds from issuance of notes payable	—	1,163,511	—	—	—	5,785,215		
Proceeds from issuance of warrants	—	—	—	—	—	214,785		
Repayments of notes payable	—	(241,191)	(151,757)	(323,971)	(158,476)	(172,823)		
Reverse stock split fractional share liability	—	—	(80)	—	—	—		
Net cash provided by (used in) financing activities	2,100,984	55,965,695	(128,602)	11,130,533	11,296,028	5,847,625		
Net increase (decrease) in cash and cash equivalents	(21,070,201)	21,306,763	(39,354,002)	2,763,939	(759,812)	(8,470,009)		
Cash and cash equivalents at beginning of period	48,082,613	27,012,412	48,319,175	8,965,173	8,965,173	11,729,112		
Cash and cash equivalents at end of period	\$ 27,012,412	\$ 48,319,175	\$ 8,965,173	\$ 11,729,112	\$ 8,205,361	\$ 3,259,103		
<b>Supplemental disclosure:</b>								
Cash paid for interest	—	77,293	37,646	54,835	30,925	220,145		
<b>Non-cash charges related to convertible preferred stock:</b>								
Beneficial conversion feature	—	23,624,173	9,726,036	19,452,073	9,726,037	9,699,463		
Accretion of issuance costs	54,973	65,963	47,945	106,223	52,079	54,146		
Preferred dividend	—	629,895	2,210,688	5,188,041	2,517,354	2,670,682		

See accompanying Notes to Consolidated Financial Statements.



## **ACORDA THERAPEUTICS, INC. AND SUBSIDIARY**

### **Notes to Consolidated Financial Statements**

#### **(1) Organization and Business Activities**

Acorda Therapeutics, Inc. ("Acorda" or the "Company") was incorporated in Delaware on March 17, 1995. The Company is a commercial stage biopharmaceutical company dedicated to the identification, development and commercialization of novel therapies that improve neurological function in people with multiple sclerosis, spinal cord injury and other disorders of the central nervous system. Prior to the fiscal year ended December 31, 2004, the Company was a development stage enterprise.

On February 24, 2004, the Board of Directors of Acorda adopted a resolution to change the Company's fiscal year end from June 30 to December 31, effective for the six-month period ended December 31, 2003. For the six-month period ended December 31, 2002 (unaudited) grant revenue and gross profit were \$25,494, net loss was \$7,215,511, beneficial conversion feature accretion of issuance costs was \$27,487 and the net loss applicable to common stockholders was \$7,188,024.

The Company acquired all of Elan Corporation plc's ("Elan") U.S. sales, marketing and distribution rights to Zanaflex Capsules and Zanaflex tablets in July 2004. These products are approved for the management of spasticity. Zanaflex tablets were approved by the FDA in 1996 and lost patent protection in 2002. There are currently 11 generic versions of Zanaflex tablets on the market. Zanaflex Capsules were approved by the FDA in 2002, but were never marketed by Elan. The Company began marketing Zanaflex Capsules in April 2005. The Company made an initial payment to Elan of \$2 million and is obligated to make royalty payments as well as additional contingent payments upon achieving certain cumulative sales milestones.

The Company is devoting substantially all of its efforts to promoting sales of Zanaflex Capsules, conducting clinical trials, pursuing regulatory approval for products under development, and engaging in preclinical development. The Company has begun to generate product revenues but has not achieved profitable operations or positive cash flows from operations. There is no assurance that profitable operations, if ever achieved, could be sustained on a continuing basis. The Company's accumulated deficit since inception through June 30, 2005 was \$191.0 million (unaudited) and the Company expects to continue to incur losses for the foreseeable future. Further, the Company's future operations are dependent on the success of the Company in commercializing Zanaflex Capsules, completing the clinical development of Fampridine-SR in MS and obtaining regulatory approval and market acceptance of this product candidate and advancing its preclinical programs.

The Company plans to finance its operations through a combination of issuance of equity securities, revenues from Zanaflex Capsules, loans and, to a lesser extent, grants. There are no assurances that the Company will be successful in obtaining an adequate level of financing needed to fund its development and commercialization efforts. The Company believes that its current financial resources and sources of liquidity should be adequate to fund operations at least through January 1, 2006 based on the Company's current projected spending levels.

#### **(2) Summary of Significant Accounting Policies**

##### **Unaudited Interim Financial Information**

The accompanying consolidated balance sheet as of June 30, 2005, the consolidated statements of operations and cash flow for the six months ended June 30, 2004 and 2005, and the statement of Stockholders' (deficit) for the six months ended June 30, 2005 are unaudited. The unaudited interim financial statements have been prepared in accordance with U.S. generally accepted accounting principles. In the opinion of the Company's management, the unaudited interim financial statements have been prepared on the same basis as the audited financial statements and include all adjustments consisting of normal recurring adjustments and accruals necessary for the fair presentation of the

Company's financial position, results of operations and its cash flows for the six months ended June 30, 2004 and 2005. The results for the six months ended June 30, 2005 are not necessarily indicative of the results to be expected for the year ended December 31, 2005.

### ***Principles of Consolidation***

The accompanying consolidated financial statements are prepared in accordance with accounting principles generally accepted in the United States of America and include the results of operations of the Company and its majority owned subsidiary (see Notes 7 and 11). All intercompany accounts and transactions have been eliminated in consolidation.

### ***Use of Estimates***

The preparation of the consolidated financial statements requires management of the Company to make a number of estimates and assumptions relating to the reported amount of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenues and expenses during the period. Significant items subject to such estimates and assumptions include research and development (clinical trial accrual), beneficial conversion charges, stock warrants and option accounting, which are all dependent on the fair value of the Company's equity security. In addition, the Company recognizes revenue based on estimated prescriptions filled. The Company adjusts its inventory value based on an estimate of inventory that may expire. Actual results could differ from those estimates.

### ***Cash and Cash Equivalents***

The Company considers all highly liquid debt instruments with original maturities of three months or less to be cash equivalents. All cash and cash equivalents are held in United States financial institutions and money market funds, which are unrestricted as to withdrawal or use. To date, the Company has not experienced any losses on its cash and cash equivalents. The carrying amount of cash and cash equivalents approximates its fair value due to its short-term and liquid nature.

### ***Restricted Cash***

Restricted cash represents a certificate of deposit placed by the Company with a bank for issuance of a letter of credit to the Company's lessor for office space.

### ***Short-Term Investments***

Short-term investments consist of corporate debt securities with original maturities greater than three months. In accordance with Statement of Financial Accounting Standards ("SFAS") No. 115 ("SFAS 115"), *Accounting for Certain Investments in Debt and Equity Securities*, the Company classifies its short-term investments as available-for-sale. Available-for-sale securities are recorded at fair value of the investments based on quoted market prices. The Company considers all of these investments to be available-for-sale.

Unrealized holding gains and losses on available-for-sale securities, which are determined to be temporary, are excluded from earnings and are reported as a separate component of other comprehensive income (loss).

Premiums and discounts on investments are amortized over the life of the related available-for-sale security as an adjustment to yield using the effective- interest method. Dividend and interest income are recognized when earned. Realized gains and losses are determined on the average cost method.

Amortized premiums and discounts, dividend and interest income and realized gains and losses are included in interest income.

### **Inventory**

Inventory is stated at the lower of cost or market value and includes amounts for both Zanaflex tablet and Zanaflex capsule inventories. All inventories consist of finished goods. Cost is determined using the first-in, first-out method (FIFO) for all inventories. The Company adjusts its inventory value based on an estimate of inventory that may expire.

### **Property and Equipment**

Property and equipment are stated at cost, net of accumulated depreciation. Depreciation is computed on the straight-line basis over the estimated useful lives of the assets, which range from three to seven years. Leasehold improvements are recorded at cost, less accumulated amortization, which is computed on the straight-line basis over the shorter of the useful lives of the asset or the remaining lease term. Expenditures for maintenance and repairs are charged to expense as incurred.

### **Intangible Assets**

The Company has recorded intangible assets related to its Zanaflex acquisition. These intangible assets are amortized on a straight line basis over the period in which the Company expects to receive economic benefit and are reviewed for impairment when facts and circumstances indicate that the carrying value of the asset may not be recoverable. The determination of the expected life will be dependent upon the use and underlying characteristics of the intangible asset. In the Company's evaluation of the intangible assets, it considers the term of the underlying patent life and the expected life of the product line. If the carrying value is not recoverable, impairment is measured as the amount by which the carrying value exceeds its estimated fair value. Fair value is generally estimated based on either appraised value or other valuation techniques.

### **Impairment of Long-Lived Assets**

In accordance with the Financial Accounting Standards Board (FASB) SFAS No. 144, *Accounting for the Impairment or Disposal of Long-Lived Assets*, the Company continually evaluates whether events or circumstances have occurred that indicate that the estimated remaining useful life of its long-lived assets may warrant revision or that the carrying value of these assets may be impaired. The Company evaluates the realizability of its long-lived assets based on profitability and cash flow expectations for the related asset. Any write-downs are treated as permanent reductions in the carrying amount of the assets. Based on this evaluation, the Company believes that, as of each of the balance sheet dates presented, none of the Company's long-lived assets was impaired.

### **Patent Costs**

Patent application and maintenance costs are expensed as incurred.

### **Research and Development**

Research and development expenses include the clinical development costs associated with the Company's product candidates and research and development costs associated with the Company's preclinical programs. These expenses include internal research and developments costs and the costs of research and development conducted on behalf of the Company by third parties, including sponsored

university-based research agreements, and clinical study vendors. All research and development costs are expensed as incurred. Costs incurred in obtaining technology licenses are charged immediately to research and development expense if the technology licensed has not reached technological feasibility and has no alternative future uses.

#### ***Accounting for Income Taxes***

Income taxes are accounted for under the asset and liability method with deferred tax assets and liabilities recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax basis. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be reversed or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in operations in the period that includes the enactment date. Deferred tax assets are reduced by a valuation allowance for the amounts of any tax benefits which, more likely than not, will not be realized.

#### ***Revenue Recognition***

The Company defers revenue on product shipments to our wholesalers based upon SFAS No. 48, *Revenue Recognition When the Right of Return Exists*, which amongst other criteria requires that future returns can be reasonably estimated in order to recognize revenue. The amount of future tablet returns is uncertain due to generic competition and customer conversion to Zanaflex Capsules. Zanaflex Capsules are a new product with no historical return data. Due to the uncertainty of returns for both products, the Company is accounting for these product shipments using a consignment model. Under the consignment model, the Company does not recognize revenue upon product shipment. For these product shipments, the Company invoices the wholesaler, records deferred revenue at gross invoice sales price, and classifies the inventory held by the wholesaler as "consigned inventory". The Company recognizes revenue on consigned inventory when such inventory is prescribed to the end-user, on a first-in first-out (FIFO) basis. The Company's revenue to be recognized is based on (1) the estimated prescription demand-based on pharmacy sales for its products, (2) the Company's analysis of third-party information, including third-party market research data, (3) the Company's internal product sales information and (4) wholesaler inventory levels and re-order information. The Company's estimates are subject to the inherent limitations of estimates that rely on third-party data, as certain third-party information was itself in the form of estimates, and reflect other limitations. The Company's sales and revenue recognition for such consigned inventory reflect the Company's estimates of actual product prescribed to the end-user.

When the Company acquired Zanaflex from Elan, it also acquired Elan's inventory of Zanaflex tablets. The Company has deferred recognition of any revenue from sales of this inventory until the return period for the product expires in June 2006, and will recognize revenue then only to the extent that deferred revenues exceed returns. The Zanaflex tablet inventory the Company acquired from Elan was labeled with a code identifying the inventory as Elan's. The Company cannot use prescription data to recognize revenue associated with inventory acquired from Elan because all of this inventory bears Elan's code and the Company cannot determine whether the prescription was filled with product that Elan sold prior to the Company's acquisition of Zanaflex. Inventory manufactured after the Company's acquisition of Zanaflex is labeled with a code that enables the Company to identify this inventory as its product. These codes are included on end-user prescription data that the Company uses to recognize revenue, enabling it to identify prescriptions filled with product sold by the Company.

The Company began receiving end-user prescription data containing its code, which enabled it to begin recognizing revenue from Zanaflex tablet sales in March 2005. The Company began marketing Zanaflex Capsules in April 2005 and began recognizing revenue in the same month.

At December 31, 2004 and June 30, 2005 the Company had deferred revenue from Zanaflex tablets of \$6.7 million and \$11.0 million (unaudited), respectively, of which \$3.6 million and \$3.0 million (unaudited), respectively, was related to product acquired from Elan that had an expiration date of less than 12 months at the time the Company sold it during 2004. The Company believes there is a high likelihood that this product will be returned which would result in its inability to recognize related revenue. If such product is returned the deferred revenue liability upon a return would offset the associated receivable or any credit we may issue if the wholesaler previously paid the invoice.

The Company's net revenues represent total revenues less allowances for customer credits, including estimated discounts, rebates, and chargebacks. Product shipping and handling costs are included in cost of sales. At the time revenue is recognized, an adjustment to revenue is recorded for estimated chargebacks, rebates, and discounts. In addition, the Company records a charge to cost of goods sold for estimated product returns at the time of product shipment to wholesalers. These revenue reductions are established by management as its best estimate at the time of revenue recognition based on available information and is adjusted to reflect known changes in the factors that impact such reserves. Reserves for chargebacks, rebates and discounts are established based on the contractual terms with customers, analysis of historical levels of discounts, chargebacks and rebates, communications with customers and purchased information about the rate of prescriptions being written and the levels of inventory remaining in the distribution channel as well as expectations about the market for each product and anticipated introduction of competitive products.

As part of the acquisition of Zanaflex, the Company agreed to accept any returns of Zanaflex tablets that were returned subsequent to January 17, 2005, including returns of product that was originally sold by Elan. Product returns prior to that date were the responsibility of Elan. The Company has recorded a liability of \$4.1 million in 2004 for the remaining estimated returns of Zanaflex tablets sold by Elan. Under the Company's return policy its obligation to accept returns for product sold by Elan expires in June 2006.

#### ***Revenue Recognition—Grants***

Revenue related to research and development grants is recognized when the related research expenses are incurred and the Company's specific performance obligations under the terms of the respective contract are satisfied. To the extent expended, grant funding related to purchases of equipment is deferred and amortized over the shorter of the equipment's useful life or the life of the related contract. Revenue recognized in the accompanying consolidated financial statements is not subject to repayment. Payments, if any, received in advance of performance under the contract are deferred and recognized as revenue when earned.

#### ***Planned Initial Public Offering Costs***

The Company originally deferred the planned initial public offering costs incurred in 2003 in accordance with SEC Staff Accounting Bulletin (SAB) Topic 5A, *Expenses of Offering*. In December 2003, the Company deferred its plan for an initial public offering. As a result, the related costs of approximately \$1.3 million were expensed and included in the Company's consolidated statements of operations for the six month period ended December 31, 2003.

### ***Concentration of Risk***

Financial instruments that potentially subject the Company to concentrations of credit risk consist principally of investments in cash and cash equivalents, restricted cash, accounts receivable and debt securities. The Company maintains cash and cash equivalents, restricted cash and debt securities with approved financial institutions. The Company is exposed to credit risks in the event of default by the financial institutions or issuers of investments in excess of FDIC insured limits. The Company performs periodic evaluations of the relative credit standing of these financial institutions and limits the amount of credit exposure with any institution.

The Company is substantially dependent upon Elan for several activities related to the development and commercialization of Fampridine-SR. The Company will rely on Elan to complete the chemistry, manufacturing and controls section of the New Drug Application ("NDA") for Fampridine-SR in multiple sclerosis. If Elan fails to provide these parts of the NDA in a complete and timely manner the Company could incur delays in filing of its NDA for Fampridine-SR in multiple sclerosis.

The Company relies on a single manufacturer, Elan, for the supply of Zanaflex Capsules and on another single manufacturer, Novartis, for the supply of tizanadine. If either Elan or Novartis experiences any disruption in their operations, a delay or interruption in the supply of the Company's products could result until the affected supplier cures the problem or the Company locates an alternative source of supply. The Company may not be able to enter into alternative supply arrangements on terms that are commercially favorable, if at all. Any new supplier would also be required to qualify under applicable regulatory requirements. The Company could experience substantial delays before it is able to qualify any new supplier and transfer the required manufacturing technology to that supplier. Novartis has informed us that they intend to discontinue tizanidine production by the end of 2005. We have established relationships with the companies that currently formulate the tablets and bottles and package Zanaflex tablets, however, we do not have an agreement with an alternative manufacturer of tizanidine.

The Company has agreed to purchase at least 75% of its Fampridine-SR product requirements from Elan, and must make compensatory payments if it does not purchase 100% of its requirements from Elan. The Company and Elan have agreed that the Company may purchase up to 25% of its annual Fampridine-SR requirements from Patheon, Inc., a qualified manufacturing source of Fampridine-SR, without making compensatory payments to Elan. In addition, the Company does not have direct contractual relationships with the suppliers of fampridine, the active pharmaceutical ingredient in Fampridine-SR, referred to as API. Currently, the Company is relying on Elan's contracts with third parties to supply API. If Elan or an alternative manufacturer is unable to obtain API from these suppliers for any reason, a new supplier would have to be identified by the Company. Although there are other potential sources of API available, any new supplier would be required to qualify under applicable regulatory requirements. Any delays in obtaining API to manufacture Fampridine-SR could delay the clinical trials of Fampridine-SR.

Similar to other pharmaceutical companies, the Company's principal customers are wholesale pharmaceutical distributors. The Company periodically assesses the financial strength of these customers and establishes allowances for anticipated losses, if necessary. To date, such losses have been minimal.

	% of total trade accounts receivable	
	As of December 31, 2004	As of June 30, 2005
	(unaudited)	
<b>Major customers:</b>		
Cardinal	27%	55%
McKesson	52	30
Amerisource	13	7
<b>Total</b>	<b>92%</b>	<b>92%</b>

#### ***Allowance for Doubtful Accounts***

A portion of the Company's accounts receivable may not be collected due principally to customer disputes and sales returns. The Company provides reserves for these situations based on the evaluation of the aging of its trade receivable portfolio and an analysis of high-risk customers. The Company's reserves contemplate its historical loss rate on receivables, specific customer situations and the economic environments in which the Company operates.

#### ***Fair Value of Financial Instruments***

The fair value of a financial instrument represents the amount at which the instrument could be exchanged in a current transaction between willing parties, other than in a forced sale or liquidation. Significant differences can arise between the fair value and carrying amounts of financial instruments that are recognized at historical cost amounts.

The following methods are used to estimate the Company's financial instruments:

- (a) Cash and cash equivalents, grant receivables, accounts receivable, accounts payable and accrued liabilities approximate their fair value due to the short-term nature of these instruments;
- (b) Available-for-sale securities are recorded based on quoted market prices;
- (c) Notes payable carrying value approximate fair value as the interest rates on these notes approximate market rate of interest; and

It is not practical for the Company to estimate the fair value of the convertible notes payable to Elan due to the specific provisions of these notes including the uncertainty of the timing of repayment which is dependent upon regulatory approval of certain products. The terms of these notes are disclosed at Note 11.

#### ***Earnings per Share***

Net loss per share is computed in accordance with SFAS No. 128, *Earnings Per Share*, by dividing the net loss allocable to common stockholders by the weighted average number of shares of common stock outstanding. The Company has certain options, warrants, convertible preferred stock and mandatorily redeemable convertible preferred stock (see Notes 3 and 8), which have not been used in the calculation of diluted net loss per share because to do so would be anti-dilutive. Anti-dilutive shares

totaled 24,091,289 as of June 30, 2002, 136,881,522 as of June 30, 2003 and December 31, 2003, and 138,414,849 as of December 31, 2004 and June 30, 2005 (unaudited). As such, the numerator and the denominator used in computing both basic and diluted net loss per share allocable to common stockholders for each year are equal. The Company has reflected the beneficial conversion feature for Series E, Series I and Series J, accretion of issuance costs for Series E, Series I, Series J and Series K, and preferred dividend for Series J and Series K in the net loss allocable to common stockholders as set forth below.

	<b>Beneficial conversion feature</b>		<b>Accretion of issuance costs</b>		<b>Preferred dividend</b>
For the year ended December 31, 2004	\$ 19,452,073		\$ 106,223	\$ 5,188,041	
For the six month period ended December 31, 2003	9,726,036		47,945	2,210,688	
For the year ended June 30, 2003	23,624,173		65,963	629,895	
For the year ended June 30, 2002	—		54,973	—	
For the six month period ended June 30, 2005 (unaudited)	9,699,463		54,146	2,670,682	
For the six month period ended June 30, 2004 (unaudited)	9,726,037		52,079	2,517,354	

#### **Stock-Based Compensation**

The Company has various stock-based employee and non-employee compensation plans, which are described more fully in Note 9. The Company accounts for options and restricted stock granted to employees and directors in accordance with the fair value method of SFAS No. 123, *Accounting for Stock-Based Compensation* (SFAS No. 123), as amended by SFAS No. 148, *Accounting for Stock-Based Compensation Transition and Disclosure an amendment of FASB Statement No. 123* and related interpretations. As such, compensation expense is recorded on stock option and restricted stock grants based on the fair value of the options or restricted stock granted, which is estimated on the date of grant using the Black-Scholes option-pricing model for stock options granted, and is recognized on a straight-line basis over the vesting period. The Company accounts for stock options granted to non-employees on a fair-value basis in accordance with SFAS No. 123, Emerging Issues Task Force Issue ("EITF") No. 96-18, *Accounting for Equity Instruments That Are Issued to Other Than Employees for Acquiring, or in Conjunction with Selling, Goods or Services*, and FASB Interpretation No. 28, *Accounting for Stock Appreciation Rights and Other Variable Stock Option or Award Plans an Interpretation of APB Opinion No. 15 and 25*. As a result, the non-cash charge to operations for non-employee options with vesting or other performance criteria is affected each reporting period by changes in the estimated fair value of the Company's common stock. The two factors which most affect charges or credits to operations related to stock-based compensation are the fair value of the common stock underlying stock options for which stock-based compensation is recorded and the volatility of such fair value. If the Company's estimates of the fair value of these equity instruments changes, it would have the effect of changing compensation expense. Because shares of the Company's common stock have not been publicly traded, the Company generally estimates the fair value of its common stock based on the most recent previous sale of convertible preferred stock (convertible on a one-for-one basis into common stock). The Company does not discount the issuance price of its preferred stock in estimating the fair value of its common stock.

## ***Segment Information***

The Company is managed and operated as one business. The entire business is managed by a single management team that reports to the chief executive officer. The Company does not operate separate lines of business with respect to any of its product candidates. Accordingly, the Company does not prepare discrete financial information with respect to separate product candidates or by location and does not have separately reportable segments as defined by SFAS No. 131, *Disclosures about Segments of an Enterprise and Related Information*.

## ***Comprehensive Income (Loss)***

SFAS No. 130, *Reporting Comprehensive Income* ("SFAS No. 130") establishes standards for the reporting and display of comprehensive income (loss) and its components in a full set of financial statements. SFAS No. 130 requires that unrealized gains (losses) from the Company's investment securities be included in other comprehensive income (loss).

## ***Recent Accounting Pronouncements***

In December 2004, the FASB issued SFAS No. 123R. This statement is a revision of FASB Statement No. 123, *Accounting for Stock-Based Compensation*. This statement supersedes APB Opinion No. 25, *Accounting for Stock Issued to Employees*, and its related implementation guidance. This statement establishes standards for the accounting for transactions in which an entity exchanges its equity instruments for goods or services. It also addresses transactions in which an entity incurs liabilities in exchange for goods or services that are based on the fair value of the entity's equity instruments or that may be settled by the issuance of those equity instruments. The full impact of adoption of SFAS 123R cannot be predicted at this time because it will depend on levels of share-based payments granted in the future. However, had the Company adopted SFAS 123R in prior periods, management believes the impact of that standard would have approximated the impact of SFAS 123.

In June 2005, the FASB issued FASB Staff Position No. 150-5 ("FSP 150-5") to address whether freestanding warrants and other similar instruments on shares that are either puttable or mandatorily redeemable would be subject to the requirements of FASB Statement No. 150, *Accounting for Certain Financial Instruments with Characteristics of both Liabilities and Equity*, regardless of the timing of the redemption feature or the redemption price. FSP 150-5 concluded that warrants for both puttable and mandatorily redeemable shares are liabilities under SFAS No. 150. FSP 150-5 is required to be adopted in the first reporting period beginning after June 30, 2005. The adoption of FSP 150-5 will effect the classification of the Company's warrants that provide the holder with the right to purchase \$300,000 (unaudited) worth of shares of preferred stock in the Company's next qualifying equity round, or 40,000 shares of Series K mandatorily redeemable preferred stock if no such round is issued prior to December 31, 2005 (see Note 8). Upon adoption in July 2005, the Company will reclassify the value ascribed to the warrant of \$214,785 (unaudited) from additional paid in capital to a liability and the warrant will be marked to market each reporting period thereafter with the change in fair value recorded to earnings.

### (3) Beneficial Conversion Feature

In May 2003, the Company completed a private placement of 112,790,233 shares of Series J mandatorily redeemable convertible preferred stock at \$0.49 per share for an aggregate purchase price of approximately \$55,267,000. The terms of the preferred stock are more fully described in Note 8.

As part of this financing, the original conversion price of the Series A through Series I preferred stock was reduced as a result of anti-dilution adjustments, which resulted in a beneficial conversion amounting to \$80,730,286 in accordance with EITF No. 98-5, *Accounting for Convertible Securities with Beneficial Conversion Features or Contingently Adjustable Conversion Ratios* and EITF No. 00-27, *Application of Issue No. 98-5 to Certain Convertible Instruments*. The beneficial conversion charge of \$20,860,491 relating to Series A, Series B, Series C, Series F and Series H convertible preferred stock, which are not mandatorily redeemable and may be converted at any time at the option of the holders to common stock, has been recorded as an immediate charge to additional paid-in capital. The remaining beneficial conversion amount of \$59,869,795 related to Series E and Series I convertible preferred stock, which are mandatorily redeemable at any time on or after June 30, 2008, is being accreted ratably over the mandatory redemption period. Such accretion amounted to \$1,656,854, \$5,830,852, \$11,661,705 and \$5,814,922 (unaudited) for the year ended June 30, 2003, the six month period ended December 31, 2003, the year ended December 31, 2004 and the six-month period ended June 30, 2005, respectively, and is charged to additional paid-in capital.

In addition, the issuance of Series J mandatorily redeemable convertible preferred stock resulted in a beneficial conversion amounting to \$39,994,812 in accordance with EITF No. 98-5. The beneficial conversion is calculated based on the estimated fair value of the Company's common stock price per share at the date of issuance of Series J preferred stock of approximately \$10.14 per share of common stock, which was calculated based on the estimated projected midpoint of the range of the Company's initial public offering price per common share, which was planned in the fourth calendar quarter of 2003, and the stock price appreciation in comparable public companies from May 2003 to August 2003. The beneficial conversion feature is being accreted ratably over the mandatory redemption period, with a charge to additional paid-in capital of \$1,106,828, \$3,895,184, \$7,790,368 and \$3,884,541 (unaudited) for the year ended June 30, 2003, the six month period ended December 31, 2003, the year ended December 31, 2004 and the six-month period ended June 30, 2005 (unaudited), respectively.

### (4) Short-Term Investments

The Company has accounted for its investments in accordance with SFAS No. 115, *Accounting for Certain Investments in Debt and Equity Securities*, and determined that all of its short-term investments are classified as available-for-sale. Available-for-sale securities are carried at fair value with interest on these securities included in interest income. Available-for-sale securities consisted of the following:

	Amortized Cost	Gross unrealized gains	Gross unrealized losses	Estimated fair value
Corporate debt securities				
As of December 31, 2003	\$ 32,247,745	\$ 25,690	\$ (23,172)	\$ 32,250,263
As of December 31, 2004	9,419,713		(23,036)	9,396,677
As of June 30, 2005 (unaudited)	11,457,252	—	(11,397)	11,445,855

The contractual maturities of available-for-sale debt securities at December 31, 2004 and June 30, 2005 are within one year.

Investments are considered impaired when a decline in fair value is determined to be other-than-temporary. The Company employs a systematic methodology that considers available evidence in evaluating potential impairment of its investments in accordance with Emerging Issues Task Force Issue No. 03-1, *The Meaning of Other-Than-Temporary Impairment and Its Application to Certain Investments* (EITF 03-01). In the event that the cost of an investment exceeds its fair value, the Company evaluates, among other factors, the duration and extent to which the fair value is less than cost; the financial health of and business outlook for the investment or investee; and the Company's intent and ability to hold the investment. The Company has determined that there were no other-than-temporary declines in the fair values of its short term investments as of December 31, 2004.

The following table shows the gross unrealized losses and fair value of the Company's available-for-sale securities with unrealized losses that are not deemed to be other-than-temporarily impaired, aggregated by investment category and length of time that individual securities have been in a continuous unrealized loss position, at December 31, 2004 (in thousands):

Description of Securities	Less than 12 months		12 Months or Greater	
	Fair value	Unrealized loss	Fair value	Unrealized loss
Corporate debt securities(1)	\$ 9,397	\$ (23)	\$ —	\$ —
Total	\$ 9,397	\$ (23)	\$ —	\$ —

- (1) The unrealized losses of \$23,000 on the corporate debt securities were attributable to increases in interest rates, as well as bond pricing. The Company invests in bonds that are rated A1 or better, as dictated by its approved investment policy. Since the changes in the market value of these investments are due to changes in interest rates and not credit quality, and the Company has the ability and intent to hold these investments until recovery of the fair value, the Company does not consider its investments in corporate debt securities to be other-than-temporarily impaired at December 31, 2004.

Short-term investments with original maturity of three months or less have been classified as cash and cash equivalents, and amounted to \$7,551,356, \$7,878,024 and \$1,187,839 (unaudited) as of December 31, 2003, December 31, 2004 and June 30, 2005, respectively.

## (5) Property and Equipment

Property and equipment consisted of the following:

	December 31, 2003	December 31, 2004	June 30, 2005	Estimated useful lives
	(unaudited)			
Laboratory equipment	\$ 2,068,502	\$ 2,113,093	\$ 2,106,393	5 years
Furniture and fixtures	535,200	537,473	539,247	5 years
Computer equipment	585,244	759,949	866,509	3 years
Leasehold improvements	1,727,813	2,023,033	2,039,999	5 to 7 years
	<hr/>	<hr/>	<hr/>	
	4,916,759	5,433,548	5,552,148	
Less accumulated depreciation	1,823,605	2,886,534	3,411,537	
	<hr/>	<hr/>	<hr/>	
	\$ 3,093,154	\$ 2,547,014	\$ 2,140,611	
	<hr/>	<hr/>	<hr/>	

Depreciation and amortization expense on property and equipment was \$417,479 and \$740,201 for the fiscal year ended June 30, 2002 and 2003, \$445,260 for the six-month period ended December 31, 2003, \$1,077,910 for the year ended December 31, 2004 and \$525,004 (unaudited) for the six-month period ended June 30, 2005.

## (6) Accrued Expenses and Other Current Liabilities

Accrued expense and other current liabilities consisted of the following:

	December 31, 2003	December 31, 2004	June 30, 2005
	(unaudited)		
Bonus payable	\$ 1,106,698	\$ —	\$ —
Milestone payable to Elan	—	750,000	750,000
Royalties payable	—	519,531	1,348,302
Accrued research and development expenses	2,649,368	825,166	521,316
Other accrued expenses	593,762	795,521	1,141,259
	<hr/>	<hr/>	<hr/>
	\$ 4,349,828	\$ 2,890,218	\$ 3,760,877
	<hr/>	<hr/>	<hr/>

Accrued research and development expenses include amounts relating to the clinical trials as well as preclinical operating costs. Other accrued expenses include legal and business development accruals, payroll liabilities, vacation and commission accruals and other operating expense accruals.

## (7) Notes Payable

In 2003, the Company entered into two financing agreements with General Electric Capital Corporation in the aggregate amount of \$1,153,511, bearing annual fixed interest rates of 8.57% and 8.88%, to finance the purchase of certain property and equipment. Borrowings are secured by a security interest in certain property and equipment of the Company and the agreements do not include any debt covenants. The Company is required to pay monthly installments until October 2006. The aggregate principal payments required subsequent to December 31, 2004 are: \$301,938 in 2005, and \$144,654 in 2006. The related interest payments required subsequent to December 31, 2004 are: \$26,001 in 2005, and \$5,109 in 2006.

In 2005 (unaudited), the Company entered into a \$6 million senior secured term loan with General Electric Capital Corporation ("GE"), that bears an annual fixed interest rate of 9.93%. The Company is required to pay monthly installments until February 2008, with interest-only payments for the first six months followed by principal and interest payments for the remaining 29 months. The loan is secured by all of the Company's personal property and fixtures owned at closing or subsequently acquired. The aggregate principal payments required subsequent to December 31, 2004 are: \$899,887 in 2005, \$2,317,217 in 2006, \$2,558,084 in 2007 and \$224,813 in 2008. The related interest payments required subsequent to December 31, 2004 are: \$283,130 in 2005, \$402,862 in 2006, \$161,995 in 2007 and \$1,860 in 2008. See Note 8.

For long-term convertible notes payable to related party see Note 11.

#### **(8) Mandatorily Redeemable Convertible Preferred Stock and Convertible Preferred Stock**

The board of directors of the Company has authorized 141,754,865 shares of convertible preferred stock, designated as Series A, B, C, D, E, F, G, H, I, J and K preferred stock (Series A, Series B, Series C, Series D, Series E, Series F, Series G, Series H, Series I, Series J and Series K; collectively, the Preferred Stock). Series E, Series I, Series J and Series K are mandatorily redeemable convertible preferred stock (Redeemable Preferred Stock). Upon an initial public offering, the preferred stock will automatically convert into common stock.

The terms of the Preferred Stock are as follows:

##### ***(a) Dividends***

The Preferred Stock (except Series J and Series K) is entitled to noncumulative dividends prior to and in preference to dividends declared or paid on the common stock, at the rate of \$0.10 per share per annum for Series A through Series H and at the rate of \$0.39 per share per annum for Series I when and if declared by the board of directors. Dividends on Series J and Series K are cumulative and accrue on each share of Series J Preferred Stock and Series K Preferred Stock commencing on the date of issuance, whether or not earned or declared at the rate of \$0.0392 per share per annum for Series J and at the rate of \$0.60 per share per annum for Series K, based on the original issue price of Series J Preferred Stock and Series K Preferred Stock, prior and in preference to any declaration or payment of any dividend on any other Series of Preferred Stock holders (Series A through Series I). Series J and Series K dividends are payable when declared by the Board of Directors or upon liquidation, as defined or upon redemption, provided, however, that the amount of any dividend payable shall not exceed the original issue price of such series of preferred stock. Accrued dividends for Series J and K were \$6.6 million and \$761,000 as of December 31, 2004 and \$8.8 million and \$1.2 million (unaudited) as of June 30, 2005, respectively.

##### ***(b) Liquidation***

The preferred stockholders have liquidation preferences over common stockholders based on the series of Preferred Stock held. In the event of liquidation, dissolution, or winding up of the Company, each holder of shares of Series J Preferred Stock and Series K Preferred Stock is entitled to be paid in preference to common stockholders and any other Series of Preferred Stock holders (Series A through Series I) an amount equal to the original issue price per share of \$0.49 for Series J and \$7.50 for Series K, plus all accrued or declared but unpaid dividends. After payment has been made to Series J and Series K Preferred Stock, the Series I, Series E-1, Series E-2, Series F and Series H shall be

entitled to receive out of the available assets, on a pro rata basis, an amount per share of \$3.89, \$1.31, \$1.07, \$1.09 and \$1.36, respectively, plus all declared but unpaid dividends on each such share issued. After payment of the above mentioned preferential amounts the holders of Series E, Series F and Series H Preferred Stock shall be entitled to be paid out of the remaining available assets an amount per share equal to \$0.26, \$0.21 and \$0.27, respectively, plus all declared but unpaid dividends. After payment of the above mentioned preferential amounts, the holders of Series A through Series H Preferred Stock shall be entitled to be paid out of remaining available assets an amount per share up to and including such amounts paid in accordance with as mentioned above, equal to \$1.00, \$2.00, \$3.00, \$12.50, \$3.13, \$5.22, the greater of \$2.00 and 80% of the closing price per share of the Institutional Financing, as defined, most recently completed by the Company prior to the issuance of the Series G Preferred Stock and \$3.25, respectively.

**(c) Conversion**

The Preferred Stock will be automatically converted into common stock upon an initial public offering of the Company's common stock or upon either the approval by written consent of the holders of a majority of the then outstanding shares of Series A, Series B, Series C, Series D, Series E, Series F, Series G, Series H and Series I voting together as a single class and upon approval by written consent of the holders of a majority of the then outstanding shares of Series J and Series K.

Preferred stock	Shares outstanding at December 31, 2004	Conversion Price	Shares of Common Stock
Series A	1,306,068	\$ 9.06	144,085
Series B	900,000	11.86	151,821
Series C	333,333	14.64	68,339
Series D	—	11.86	—
Series E	7,472,612	13.81	1,461,383
Series F	2,300,000	13.81	449,804
Series G	—	(1)	—
Series H	1,575,229	15.34	333,839
Series I	10,204,047	17.11	2,319,470
Series J	112,790,233	7.64	7,230,132
Series K	1,533,327	9.75	1,179,482

- (1) The product of (x) the number of Series G Preferred Stock surrendered and (y) the number determined by dividing (i) the greater of \$31.20 or 80% of the closing price per share of the most recently completed bona fide equity financing of the Company prior to the issuance of Series G Preferred Stock by (ii) the Series G conversion price in effect.

In the event the convertible promissory notes payable to Elan are converted into common stock, the per share conversion price on the Series I and Series J preferred stock would be adjusted to \$16.37 and \$7.12, respectively. Other than in an initial public offering or certain other specified instances, in the event the Company issues common stock (or securities convertible into common stock) at an effective common stock issuance price of less than a specified amount the conversion price on all preferred stock will be reduced based on anti-dilution provisions.

**(d) Redemption**

Holders of Series E, Series I, Series J and Series K Preferred Stock may at any time on or after June 30, 2008, require the Company to redeem all or any portion of such holders' redeemable preferred stock at a redemption price, as specified below, provided, however, that no holder of redeemable preferred stock may so require such redemption unless and until (i) the holders of not less than a majority of the redeemable preferred stock then issued and outstanding make such election and (ii) the holders of a majority of the Series J and Series K preferred stock then issued and outstanding make such election prior to September 30, 2008 (these terms collectively, the Redemption Date). The redemption price for each share of redeemable preferred stock shall be the original issue price plus accrued but unpaid dividends. One half of such aggregate redemption price for all redeemable preferred stock shall be payable in cash on the Redemption Date, as defined and the second half of such aggregate redemption price shall be payable in cash on the first anniversary of the Redemption Date, as defined.

**(e) Voting**

Each holder of outstanding Preferred Stock (other than Series F) shall be entitled to the number of votes equal to the number of shares of common stock into which the shares of Preferred Stock so held could be converted. The holders of Series F Preferred Stock shall have no voting rights except as required by Delaware General Corporation Law. The board of directors consists of nine directors: (i) two directors elected by the holders of Series A, Series E and Series H Preferred Stock, voting as a single class; (ii) one director elected by Series I Preferred Stock; (iii) two directors elected by Series J Preferred Stock; (iv) one director elected by holders of common stock; and (v) three directors elected by the holders of common stock and Preferred Stock, voting as a single class. The Company's certificate of incorporation includes provisions which restrict the Company from certain actions without the approval of a defined percentage of the preferred stockholders.

**Convertible Preferred Stock**

**Series A**

In May 1995, the Company issued 610,000 shares of Series A, at a per share price of \$1.00, for aggregate proceeds of \$610,000, and granted each purchaser a warrant to purchase one additional share of Series A for every ten Series A shares purchased, at an exercise price of \$1.00 per share. The Company estimated the fair value of warrants at approximately \$44,971. The fair value was determined by the Black-Scholes valuation method, using a risk free interest rate of 6.5%, the warrants' contractual life of seven years, an annual volatility of 73% and no expected dividends. Such amount was credited to additional paid-in capital and charged immediately to additional paid-in capital, as the warrants were exercisable at any time at the option of the holder. Each warrant was exercised for one share of Series A. During fiscal 2002, 22,800 of these warrants were exercised on a cash basis and 28,268 were exercised in a cashless exercise resulting in total proceeds of \$22,800. The remaining 9,932 of these warrants were not exercised and have expired.

In fiscal 1996 and 1997, the Company issued 450,000 and 195,000 shares of Series A, at a per share price of \$1.00, for aggregate proceeds of \$450,000 and \$195,000, respectively. In August 1996 and January 1997, the Company granted 340,000 warrants to purchase shares of Series A at an exercise price of \$1.00. These warrants expired in August 2003 and January 2004, respectively. None of these warrants were exercised. The Company estimated the fair value of warrants at approximately \$254,110.

Such value was determined by the Black-Scholes valuation method, using a risk free interest rate of 6.5%, the warrant's contractual life of seven years, an annual volatility of 75% and no expected dividends. Such amount was credited to additional paid-in capital and charged immediately to additional paid-in capital as the warrants were exercisable at any time at the option of the holder.

### **Series B**

In January 1997, the Company issued 750,000 shares of Series B, at a per share price of \$2.00, for aggregate proceeds of \$1,500,000. In January 2002, the Company issued 150,000 shares of Series B, at a per share price of \$2.00, for aggregate proceeds of \$300,000 (see Note 11).

As of June 30, 2005 (unaudited), 100,000 Series B warrants were outstanding with an exercise price per share of \$2.00. The warrants to acquire Series B Preferred Stock enable the holder to acquire 21,929 shares of common stock.

### **Series C**

In February 2002, the Company issued to Elan and affiliates 333,333 shares of Series C, at a per share price of \$3.00, for aggregate proceeds of \$999,999.

### **Series F**

In April 1998, the Company issued to Elan 2,300,000 shares of Series F, at a per share price of approximately \$5.22, for aggregate proceeds of approximately \$12 million. Also, in April 1998, the Company entered into a joint venture agreement with Elan. The \$12 million proceeds from the sale of the shares of Series F was then transferred to MS Research and Development Corp. ("MSRD"), a joint venture company of which the Company owned approximately 80% and Elan owned 20%. To purchase its approximate 20% interest, Elan invested an additional \$3 million into MSRD. The combined \$15 million was subsequently used to license research and development technology from Elan to develop Elan's proprietary oral sustained release formulation of fampridine for the treatment of multiple sclerosis. For the years ended June 30, 2002 and 2003 and for six-month period ended December 31, 2003, MSRD incurred approximately \$2.9 million, \$3.2 million and \$3.3 million, respectively, in research and development expenses, which is included as research and development expense in the accompanying statements of operations, of which the Company funded 80% and Elan funded 20% until June 30, 2002, in accordance with the terms of the original development agreement. Elan's ownership interest in MSRD is reflected as minority interest in the accompanying statement of operations. The minority interest share of the MSRD losses were being funded by Elan, and through June 30, 2002 the Company received \$1,279,361 as a reimbursement of this funding. In fiscal 2003, Elan ceased funding its approximately 20% share of the operating expenses of MSRD and the Company ceased recognizing the related minority interest benefit resulting in an increase in the Company's ownership interest to 83% pursuant to the original agreement (see Note 11 for discussion on license and research agreement.) In September 2003, the Company entered into a termination and assignment agreement with Elan, EIS and MSRD, pursuant to which MSRD assigned to the Company its assets, including the license from Elan for Fampridine-SR for MS. The Company paid MSRD approximately \$11.5 million for all of the assets and assumed all of the liabilities of MSRD, and MSRD distributed to the Company approximately \$9.5 million as pro rata portion of the purchase price. From the time of establishment of MSRD until the sale of MSRD's assets to the Company, Elan was considered to be a related party under generally accepted accounting principles.

## **Series H**

In August 1999, the Company completed a private placement of 1,575,229 shares of Series H at \$3.25 per share, resulting in net proceeds to the Company of \$5,119,494 after payment of legal and certain other fees.

### ***Mandatorily Redeemable Convertible Preferred Stock***

The following convertible preferred stock are based on the redemption rights and conversion option as discussed above under terms of the Preferred Stock.

## **Series E**

In July and November 1998, the Company issued 7,472,612 shares of Series E, that are mandatorily redeemable at \$2.70 per share for an aggregate purchase price of approximately \$20,176,000. The Company incurred issuance costs of \$209,270. Such costs are netted against the proceeds of the Series E, and are being amortized over the mandatory redemption period.

## **Series I**

In March 2001, the Company issued 10,204,047 shares of Series I that are mandatorily redeemable at \$3.89 per share for an aggregate purchase price of approximately \$39,694,000. The Company incurred issuance costs of \$138,179. Such costs are netted against the proceeds of the Series I, and are being amortized over the mandatory redemption period.

## **Series J**

In May 2003, the Company issued 112,790,233 shares of Series J that are mandatorily redeemable at \$0.49 per share for an aggregate purchase price of approximately \$55,267,000. The Company incurred issuance costs of \$334,219. Such costs are netted against the proceeds of the Series J, and are being amortized over the mandatory redemption period.

In September 2003, the Company obtained approval by the written consent from the holders of Series J preferred stock voting together as a single class and the holders of the Preferred Stock, voting separately as a single class on an as if converted basis for a reduction in the price per share of common stock offered to the public in an initial public offering which would trigger automatic conversion of the preferred stock into common stock from an offering price of not less than \$14.76 per share to an offering price of not less than \$12.00 per share.

## **Series K**

In March 2004, the Company issued 1,533,327 shares of Series K which are mandatorily redeemable at \$7.50 per share for an aggregate purchase price of \$11,499,943. The Company incurred issuance costs of \$53,728. Such costs are netted against the proceeds of the Series K, and will be amortized over the mandatory redemption period.

In January 2005, the Company granted warrants to purchase \$300,000 (unaudited) worth of shares of Preferred Stock in the Company's next qualifying equity round, or Series K if no such round is issued prior to December 31, 2005. The number of Series K shares to be received upon exercise is 40,000 at the Series K issue price of \$7.50 per share, which converts to 30,769 common shares. The Company estimated the fair value of warrants at approximately \$214,785. Such value was determined by the Black-Scholes valuation method, using a risk free interest rate of 3.5%, the warrant's contractual

life of ten years, an annual volatility of 90% and no expected dividends. These warrants were issued to GE in conjunction with the \$6 million senior secured term loan (see Note 7). The discount of the note related to the warrants is being accreted over the life of the notes and resulted in a \$49,305 (unaudited) charge to interest expense for the six-month period ended June 30, 2005.

The changes in mandatorily redeemable convertible preferred stock are as follows:

	Mandatorily Redeemable Convertible Preferred Stock (in thousands)							
	Series E		Series I		Series J		Series K	
	Number of Shares	Amount	Number of Shares	Amount	Number of Shares	Amount	Number of Shares	Amount
Balance at June 30, 2001	7,473	\$ 20,040	10,204	\$ 39,564	—	—	—	—
Accretion of issuance costs	—	27	—	28	—	—	—	—
<b>Balance at June 30, 2002</b>	<b>7,473</b>	<b>20,067</b>	<b>10,204</b>	<b>39,592</b>	<b>—</b>	<b>—</b>	<b>—</b>	<b>—</b>
Issuance of Series J mandatorily redeemable convertible preferred stock	—	—	—	—	112,790	54,933	—	—
Accretion of issuance costs	—	27	—	28	—	11	—	—
Accrual of preferred dividend on Series J mandatorily redeemable convertible preferred stock	—	—	—	—	—	630	—	—
Beneficial conversion feature for reduction in conversion price	—	(20,176)	—	(39,694)	—	—	—	—
Beneficial conversion feature on issuance	—	—	—	—	—	(39,995)	—	—
Deemed dividends on preferred stock for reduction in conversion price	—	558	—	1,098	—	—	—	—
Deemed dividends on preferred stock for issuance of preferred stock with beneficial conversion feature	—	—	—	—	—	1,107	—	—

**Mandatorily Redeemable Convertible Preferred Stock  
(in thousands)**

	Series E		Series I		Series J		Series K	
	Number of Shares	Amount	Number of Shares	Amount	Number of Shares	Amount	Number of Shares	Amount
Balance at June 30, 2003	7,473	\$ 476	10,204	\$ 1,024	112,790	\$ 16,686	—	—
Accretion of issuance costs	—	8	—	7	—	32	—	—
Accrual of preferred dividend on Series J mandatorily redeemable convertible preferred stock	—	—	—	—	—	2,211	—	—
Deemed dividends on preferred stock for reduction in conversion price	—	1,965	—	3,866	—	—	—	—
Deemed dividends on preferred stock for issuance of preferred stock with beneficial conversion feature	—	—	—	—	—	3,895	—	—
Balance at December 31, 2003	7,473	\$ 2,450	10,204	\$ 4,897	112,790	\$ 22,824	—	—
Issuance of Series K mandatorily redeemable convertible preferred stock	—	—	—	—	—	1,533	\$ 11,446	10
Accretion of issuance costs	—	16	—	15	—	65	—	767
Accrual of preferred dividend on Series K mandatorily redeemable convertible preferred stock	—	—	—	—	—	—	—	—
Accrual of preferred dividend on Series J mandatorily redeemable convertible preferred stock	—	—	—	—	—	4,421	—	—
Deemed dividends on preferred stock for reduction in conversion price	—	3,930	—	7,732	—	—	—	—
Deemed dividends on preferred stock for issuance of preferred stock with beneficial conversion feature	—	—	—	—	—	7,790	—	—

Balance at December 31, 2004	7,473	\$ 6,396	10,204	\$ 12,644	112,790	\$ 35,100	1,533	\$ 12,223
Accretion of issuance costs	—	8	—	8	—	32	—	6
Accrual of preferred dividend on Series K mandatorily redeemable convertible preferred stock	—	—	—	—	—	—	—	460
Accrual of preferred dividend on Series J mandatorily redeemable convertible preferred stock	—	—	—	—	—	2,211	—	—
Deemed dividends on preferred stock for reduction in conversion price	—	1,960	—	3,855	—	—	—	—
Deemed dividends on preferred stock for issuance of preferred stock with beneficial conversion feature	—	—	—	—	—	3,885	—	—
<b>Balance at June 30, 2005 (unaudited)</b>	<b>7,473</b>	<b>\$ 8,364</b>	<b>10,204</b>	<b>\$ 16,507</b>	<b>112,790</b>	<b>\$ 41,228</b>	<b>1,533</b>	<b>\$ 12,689</b>

## (9) Common Stock Options and Warrants

Upon inception of the Company in March 1995, the founders, directors, and certain employees purchased 166,827 shares of restricted common stock at a per share price of \$0.16.

On June 18, 1999, the Company's board of directors approved the adoption of the Acorda Therapeutics, Inc. 1999 Employee Stock Option Plan (the "Plan"). All employees of the Company are eligible to participate in the Plan, including executive officers, as well as directors, independent contractors, and agents of the Company. The Plan is administered by the Compensation Committee of the board of directors, which selects the individuals to be granted options and stock appreciation rights, determines the time or times at which options and stock appreciation rights shall be granted under the Plan, determines the number of shares to be granted subject to any option or stock appreciation right under the Plan and the duration of each option and stock appreciation right, and makes any other determinations necessary, advisable, and/or appropriate to administer the Plan. Under the Plan, each option granted expires no later than the tenth anniversary of the date of its grant. Options vest over a four year period on a quarterly basis commencing with the date of award. Compensation expense is calculated using a Black-Scholes calculation with the expense being recognized over the vesting period. No option may be granted pursuant to the Plan more than ten years after the date on which the Plan was adopted by the board of directors and any option granted under the Plan shall, by its terms, not be exercisable more than ten years after the date of grant. In March 2004, the number of shares authorized for issuance under the Acorda Therapeutics 1999 Employee Stock option plan was increased from 1,275,641 shares to 2,451,088 shares.

The effects of applying SFAS No. 123 in a particular year, may not be representative of the effects on reported net income or loss for future years. The fair value of each option granted is estimated on the date of grant using an option-pricing model with the following weighted average assumptions:

	Year ended June 30,		Six-month period ended December 31, 2003	Year ended December 31, 2004	Six-month period ended June 30, 2004	Six-month period ended June 30, 2005
	2002	2003			(unaudited)	(unaudited)
<b>Employees and directors:</b>						
Estimated volatility	97.7%	94.0%	89.8%	90.0%	88.29%	82.8%
Expected life in years	5	5	5	5	5	5
Risk free interest rate	4.41%	3.04%	3.28%	3.41%	2.73%	3.68%
Dividend yield	—	—	—	—	—	—

The Company estimated volatility for purposes of computing compensation expense on its employee and non-employee options using the volatility of public companies that the Company considered comparable. The expected life used to estimate the fair value of non-employee options is equal to the contractual life of the option granted, which is 10 years.

The weighted average fair value per share of options granted to employees for the years ended June 30, 2002 and 2003, the six month period ended December 31, 2003, the year ended December 31, 2004 and the six month period ended June 30, 2005 amounted to approximately \$51.95, \$52.73, \$16.22, \$6.95, and \$6.57 (unaudited) respectively. The weighted average fair value per share of options granted to non-employees for the six month period ended December 31, 2003 amounted to approximately \$7.64. No options were granted to non-employees for the years ended June 30, 2002, and 2003, and December 31, 2004, and the six month period ended June 30, 2005 (unaudited).

Common stock option and warrant activity from June 30, 2001 to June 30, 2005 is as follows (this table does not include warrants to acquire Series A, Series B and Series K Preferred stock, which are discussed in Note 8):

	Shares	Exercise Price per share
Balance at June 30, 2001	147,532	
Granted	43,631	\$23.40 - \$31.20
Forfeited	(3,050)	5.46 - 23.40
Exercised	(3,381)	5.46 - 23.40
 Balance at June 30, 2002	 184,732	
Granted	11,170	12.48 - 31.20
Forfeited	(4,588)	5.46 - 31.20
 Balance at June 30, 2003	 191,314	
Granted (original price \$7.64, repriced to \$2.60)	1,112,082	2.60
Forfeited	(14,114)	7.64 - 31.20
Exercised	(3,687)	1.56 - 12.48
 Balance at December 31, 2003	 1,285,595	
Granted	84,354	2.60 - 9.75
Forfeited	(61,588)	2.60 - 7.64
Exercised	(2,360)	1.56 - 7.64
 Balance at December 31, 2004	 1,306,001	
Granted	35,462	8.14
Forfeited	(106,880)	5.46 - 60.68
Exercised	(11,195)	.46 - 2.60
 Balance at June 30, 2005 (unaudited)	 1,222,388	

Options available to grant at December 31, 2004 were 70,570.

Range of exercise prices	Options and Warrants outstanding			Options and Warrants exercisable		
	Outstanding as of December 31, 2004	Weighted average remaining contractual life	Weighted average exercise price	Exercisable as of December 31, 2004	Weighted average exercise price	
					(unaudited)	
\$ .16 - \$3.12	42,628	1.67	\$ 1.52	42,628	\$ 1.52	
\$2.60	1,177,815	8.40	2.60	1,102,774	2.60	
\$9.75 - \$12.48	64,619	9.69	9.80	5,072	10.44	
\$23.40 - \$31.20	20,939	2.99	29.68	20,319	29.88	
	1,306,001	8.16	3.36	1,170,793	3.07	

In September 2003, the Company re-priced 118,142 stock options issued to employees, which had an exercise price per option of more than \$7.64, with a new exercise price per share of \$7.64. As a

result of this repricing, the Company has recognized an additional compensation charge based on the estimated fair value of the repriced options of \$575,563, of which \$449,585, \$92,054 and \$16,272 (unaudited) was recognized during the six-month period ended December 31, 2003, the year ended December 31, 2004 and the six-month period ended June 30, 2005, respectively, with the balance to be recognized over the remaining respective vesting periods of the repriced options. Such compensation expense was calculated based on the estimated fair value based upon the Black-Scholes model of the repriced options compared to the value of the options immediately prior to the date of the repricing based on the original terms.

In September 2003, the Company granted 1,062,082 stock options, that had been authorized for issuance under the Plan in May 2003, to employees under the Plan at an exercise price of \$7.64 per share, which was below the estimated fair value of the Company's common stock at the date of grant. Compensation expense of approximately \$11.0 million, attributable to the fair value of the options granted, was recognized for the six-month period ended December 31, 2003 as certain of the options issued to employees vested immediately and the balance of \$6.1 million will be recognized over the remaining respective vesting periods of the options. Such compensation expense was calculated based on the estimated projected midpoint of the range of the Company's initial public offering price per common share, which was planned in the fourth calendar quarter of 2003, and the stock price appreciation in comparable public companies from May 2003 to August 2003 (the estimated fair value of the Company's common stock on the date of grant.) In December 2003, the Company deferred its planned for an initial public offering.

In October 2003, the Company granted 38,462 stock options to its chief executive officer and 9,615 stock options to its executive director-marketing and commercialization at exercise prices of \$7.64 per share, which was below the estimated fair value of the Company's common stock at the date of grant. Compensation expense of approximately \$425,000 attributable to the fair value of the options granted was recognized for the six-month period ended December 31, 2003, as certain of the options issued to employees vested immediately and the balance of \$355,000 will be recognized over the remaining respective vesting periods of the options.

In March 2004, the Company repriced 1,250,853 stock options issued to employees, which had an exercise price per share of more than \$2.60, with a new exercise price per share of \$2.60. Most of these options were originally issued in September 2003. As a result of this repricing, the Company has recognized an additional compensation charge of \$2,200,330, of which \$1,869,872 and \$73,429 was recognized during the year ended December 31, 2004 and the six-month period ended June 30, 2005 (unaudited), respectively, with the balance to be recognized over the remaining respective vesting periods of the repriced options. Such compensation expense was calculated based on the estimated fair value of the repriced options compared to the value of the options immediately prior to the date of the repricing based on the original terms.

In March 2004, the Company granted 1,134,423 restricted shares and 17,192 stock options to employees under the Plan. The stock options were issued with an exercise price of \$9.75 per share which was the fair value of the Company's common stock at the date of grant. The restricted shares were granted for no cash consideration. The option grants are exercisable based on a four-year quarterly vesting schedule, commencing with the date of award March 9, 2004 (or, in one case, May 10, 2005). The restricted stock awards are subject to vesting over a four-year period as follows: the first installment will vest on the last to occur of (a) the expiration of the lock-up period following our initial public offering, and (b) the third day after public announcement of data regarding either the primary outcome measure of our Fampridine-SR Phase 3 trial in MS or suspension or termination of the trial, whichever comes first, and (c) in the case of Ron Cohen, June 30, 2007; except that if the vesting date under (a) or (b) or (c) would occur during a "blackout" period under our insider trading policy, the vesting date will be the first day following termination of the blackout period. The first vested installment under each restricted stock award will be calculated as the total number of shares covered by the award multiplied by a fraction, the numerator of which is the number of months from the vesting commencement date to the date on which the first installment of restricted shares vest, or the "initial vesting date," and the denominator is 48. All remaining restricted shares will vest in equal quarterly installments, measured from the vesting commencement date, except that for any partial quarter in which the initial vesting date occurs, the unvested portion of shares remaining for that quarter will vest at the end of such quarter. As a result of these grants, the total compensation charge is approximately \$11,177,540, of which compensation expense of \$2,256,103 and \$3,642,647 (unaudited) was recognized through December 31, 2004 and June 30, 2005, with the balance to be recognized over the remaining respective vesting periods of the options and restricted shares. The Company recognized compensation expense ratably over four years. As of December 31, 2004, and June 30, 2005, 1,127,808 and 749,176, restricted shares remained outstanding, respectively.

Compensation expense for options and restricted stock granted to employees amounted to \$1,331,911, \$1,580,054, \$13,198,079, \$9,049,858 and \$1,974,263 (unaudited) for the years ended June 30, 2002 and 2003, the six-month period ended December 31, 2003, the year ended December 31, 2004 and the six-month period ended June 30, 2005, respectively. Compensation expense for options and restricted stock granted to employees are classified between research and development and general and administrative expense based on employee job function.

Options granted to non-employees vest immediately or over a one to four year period based upon future service requirements. Compensation expense for options granted to non-employees amounted to \$74,624, (\$6,539), \$8,488, \$15,458 and \$172 (unaudited) for the years ended June 30, 2002 and 2003, the six-month period ended December 31, 2003, the year ended December 31, 2004 and the six-month period ended June 30, 2005, respectively. The amount of compensation expense to be recorded in the future for options granted to non-employees is subject to change each reporting period based upon changes in the estimated fair value of the Company's common stock, estimated volatility and risk free interest rate until the non-employee completed performance under the option agreement. As of December 31, 2004 and June 30, 2005, respectively, 1,756 and 1,273 (unaudited) options subject to this treatment remain unvested.

## (10) Income Taxes

The Company had available net operating loss carry-forwards ("NOL") of approximately \$131,665,000 and \$147,723,000 as of December 31, 2004 and June 30, 2005 (unaudited), for federal and

state income tax purposes, which are available to offset future federal and state taxable income, if any, and expire between 2009 and 2024. The Company also has research and development tax credit carryforwards of approximately \$1,254,000 and \$1,429,000 as of December 31, 2004 and June 30, 2005 (unaudited), for federal income tax reporting purposes that are available to reduce federal income taxes, if any, and expire in future years through 2018.

The tax effect of temporary differences that give rise to significant portions of the deferred tax assets and deferred tax liabilities as of December 31, 2003 and 2004 and June 30, 2005, are presented below:

	<b>December 31, 2003</b>	<b>December 31, 2004</b>	<b>June 30, 2005</b>
	(unaudited)		
Net operating loss carryforwards	\$ 46,146,841	\$ 39,167,783	\$ 60,566,460
Research and development tax credit	783,500	1,254,426	1,428,569
Property and equipment	(298,728)	110,266	182,894
Intellectual property	5,398,333	5,310,070	5,083,431
Stock options and warrants	5,413,596	9,130,376	9,939,894
Other temporary differences	43,302	124,141	139,081
	57,486,845	55,097,062	77,340,329
Less valuation allowance	(54,486,845)	(55,097,062)	(77,340,329)
<b>Net deferred tax assets</b>	<b>\$ —</b>	<b>\$ —</b>	<b>\$ —</b>

Changes in the valuation allowance for the six-month period ended December 31, 2003, for the year ended December 31, 2004, and for the six-month period ended June 30, 2005 (unaudited) amounted to approximately \$8,559,134, \$12,425,382 and \$7,428,102, respectively. Since inception, the Company has incurred substantial losses and expects to incur substantial losses in future periods. The Tax Reform Act of 1986 (the "Act") provides for a limitation of the annual use of NOL and research and development tax credit carryforwards (following certain ownership changes, as defined by the Act) that could significantly limit the Company's ability to utilize these carryforwards. The Company has experienced various ownership changes, as a result of past financings. Accordingly, the Company's ability to utilize the aforementioned carryforwards may be limited. Additionally, because U.S. tax laws limit the time during which these carryforwards may be applied against future taxes, the Company may not be able to take full advantage of these attributes for federal income tax purposes. Because of the above mentioned factors, the Company has not recognized its net deferred tax assets as of and for all periods presented. Accordingly, the Company has provided a full valuation allowance against its net deferred tax assets and no tax benefit has been recognized relative to its pretax losses.

## (11) License and Research Agreements

### *Elan*

In January 1997, the Company entered into several agreements with Elan, including a License and Supply Agreement to develop Elan's, sustained-release formulation of Fampridine-SR for treatment of spinal cord injury. In return for this exclusive license granted by Elan, the Company paid a license fee of \$5 million which was expensed in fiscal 1997. The term of the agreement is equal to the greater of

20 years or the duration of relevant Fampridine-SR patent rights. Any mutually agreed to research conducted by Elan will be paid by the Company at cost plus 45%. The Company will be responsible for all clinical trials and regulatory approvals. Elan will have the right to manufacture, subject to certain exceptions, products for the Company upon regulatory approval at specified prices as a percentage of net selling price. In the event Elan does not manufacture the products, it is entitled to a royalty as a stated percentage of the products' net selling price.

### **Series B and C Preferred Stock Purchase**

Concurrent with the License and Supply Agreement, the Company entered into a Preferred Stock, Convertible Note and Warrant Purchase Agreement (the "Agreement") with Elan. Under this Agreement, Elan purchased 750,000 shares of the Company's Series B at a per share price of \$2.00 and also agreed to purchase 333,333 shares of the Company's Series C at a per share price of \$3.00 within 30 days of the completion of Phase 2 clinical trials relating to products to be developed under the License and Supply Agreement. Concurrent with the purchase of Series B, the Company issued to Elan a warrant to purchase an additional 150,000 shares of Series B at a per share exercise price of \$2.00 for a period of five years. The Company estimated the fair value of warrants at approximately \$198,031. Such value was determined by the Black-Scholes valuation method, using a risk free interest rate of 6.4%, the warrant's contractual life of five years, an annual volatility of 75% and no expected dividends. Such amount was credited to additional paid-in capital and charged immediately to additional paid-in capital as the Series B was convertible at any time at the option of the holder.

Phase 2 clinical trials relating to products to be developed under the License and Supply Agreement were completed in February 2002 and Elan purchased 333,333 shares of Series C at a per share price of \$3.00 resulting in total proceeds of \$999,999. Elan also exercised its Series B warrant and the Company issued 150,000 shares of Series B at a per share price of \$2.00 resulting in total proceeds of \$300,000. The Company also issued an additional five-year warrant to purchase 100,000 shares of Series B at a per share exercise price of \$2.00 for a period of five years from the date of issuance on January 4, 2002. The Company estimated the fair value of the five-year warrant to purchase 100,000 shares of Series B at approximately \$321,000. Such value was determined by the Black-Scholes valuation method, using a risk free interest rate of 4.3%, the warrant's contractual life of five years, an annual volatility of 102% and no expected dividends. Such amount was credited to additional paid-in capital and charged immediately to research and development expenses as these warrants were issued in connection with the Company completing Phase 2 clinical trials. In addition, the Company recognized \$296,666 as a beneficial conversion feature on issuance of Series C convertible preferred stock and charged this amount to research and development expenses as these shares were issued upon the Company completing Phase II clinical trials pursuant to a previous arrangement.

### **Convertible Note**

Under the Agreement, Elan also loaned to the Company an aggregate of \$7.5 million pursuant to two convertible promissory notes. One promissory note in the amount of \$5.0 million bears interest at a rate of 3% beginning on the first anniversary of the issuance of the note. The unpaid principal is convertible into shares of the Company's Series D at a conversion price of \$12.50 per share. Principal and interest are repayable, if not converted, ratably over a seven-year period beginning one year after the Company receives certain regulatory approval for the products to be developed, subject to limitations related to gross margin on product sales. If it is determined by both parties that regulatory

approval will not likely occur, all principal and interest will not be repayable and the note will be cancellable after a defined notice period, if not earlier converted. If the License and Supply Agreement is otherwise terminated, the principal and interest is repayable ratably over 15 years.

The second promissory note in the amount of \$2.5 million is non-interest bearing. This promissory note is convertible after January 22, 1999 into either shares of Series B at a conversion price of \$2.00 per share or into an undesignated series (currently authorized as Series D) of Preferred Stock at a conversion price equal to 80% of the-then most recently completed equity financing, whichever conversion price is greater. This promissory note is repayable by the Company, if not converted by Elan, ratably over a seven-year period beginning one year after the Company receives certain regulatory approval for the products to be developed. If it is determined by both parties that regulatory approval will not likely occur or if the License and Supply Agreement is otherwise terminated, the note is repayable ratably over 15 years from the date of determination. Interest on these convertible promissory notes has been imputed using 9% on 50% of the \$5 million note and 8% on the \$2.5 million note. In case of the \$5 million note, the Company did not impute interest on 50% of the \$5 million note based on the provision in the License and Supply Agreement that provided for a recovery of up to \$2.5 million of the license fee paid, which was dependent upon regulatory approval of the product. If regulatory approval of the product is received, the convertible note would be repayable and the Company would have been entitled to recovery of up to \$2.5 million based on the aforementioned provision. If the parties determine that regulatory approval will not likely occur, the note will not be repayable and the Company would not receive recovery of up to \$2.5 million of the license fee. The \$2,173,127 difference between the \$7.5 million principal amount of the notes and the discounted balance is being accreted to interest expense over the estimated term of the notes. Elan was considered to be a related party based on its ownership interest in the Company, significant license agreements entered into and involvement with research and development activities of the Company. In addition, Elan had a right to appoint a representative on the board of directors from January 22, 1997 through May 8, 2003. Elan ceased to be a related party in September 2003 upon termination of the jointly owned corporation as described below. The aggregate amount of the \$7.5 million convertible notes payable are convertible into 278,339 shares of common stock.

In April 1998, the Company entered into an agreement with Elan to develop Elan's proprietary oral sustained release formulation of fampridine for the treatment of multiple sclerosis. Upon approval of an NDA for the product by the FDA in the United States, the Company is obligated to pay Elan \$2.5 million. In addition, the Company is obligated to pay an additional \$2.5 million to Elan, upon the earlier occurrence of the following: (a) first anniversary from the date of approval of NDA approval in the United States, or (b) upon approval of the product by a regulatory authority in Japan, the United Kingdom, Germany, France or Italy. Also, in April 1998, the Company formed MS Research & Development Corporation ("MSRD,") with Elan and one of its affiliates to develop Fampridine-SR for treatment of multiple sclerosis. At that time, MSRD licensed from Elan exclusive worldwide rights to Fampridine-SR for the treatment of multiple sclerosis.

*Termination and Assignment Agreement.* In September 2003, the Company entered into a termination and assignment agreement with Elan, Elan's affiliate, and MSRD pursuant to which MSRD (83% owned by Acorda immediately prior to entering into the agreement) assigned to the Company its assets, including the license from Elan for Fampridine-SR for treatment of multiple sclerosis. The Company paid MSRD approximately \$11.5 million for all the assets and liabilities of MSRD. MSRD

distributed the purchase price to its shareholders according to their equity ownership interest. The Company has received a distribution of approximately \$9.5 million as a result of this distribution and the remaining distribution of \$2 million was expensed in September 30, 2003 as acquired in-process research and development and classified under Research and Development-related party. The Company also purchased Elan's affiliate shares at par value and now owns approximately 88% of MSRD, which now has no assets or liabilities and is inactive.

*Amended and Restated License.* In September 2003, the Company entered into an amended and restated license with Elan, which replaced the two prior licenses for Fampridine-SR. Under this agreement, Elan granted the Company exclusive worldwide rights to Fampridine-SR, as well as Elan's formulation for any other mono- or di-aminopyridines, for all indications, including spinal cord injury and multiple sclerosis. The Company agreed to pay Elan milestone payments and royalties based on net sales of the product if and when approved.

Elan may terminate the Company's license in the United States, the major European markets or Japan if the Company does not file to obtain regulatory approval or launch the product after regulatory approval in the applicable country within specified periods. If Elan terminates the Company's license in any applicable country, Elan is entitled to license from the Company patents rights and know-how relating to the product and to market the product in the applicable country, subject to royalty payments.

Elan is responsible for completing the chemistry, manufacturing and controls section of the NDA for Fampridine-SR and equivalent regulatory applications outside the United States. Elan is also responsible for supplying the product for clinical trials under this agreement.

Subject to early termination provisions, the Elan license terminates on a country by country basis on the latter to occur of fifteen years from the date of the agreement, the expiration of the last to expire Elan patent or the existence of competition in that country.

*Supply Agreement.* In September 2003, the Company entered into a supply agreement with Elan relating to the manufacture and supply of Fampridine-SR by Elan. The Company agreed to purchase at least 75% of its annual requirements of product from Elan, unless Elan is unable or unwilling to meet its requirements, for a purchase price based on a specified percentage of net sales. In those circumstances, where the Company elects to purchase less than 100% of its requirements from Elan, the Company agreed to make certain compensatory payments to Elan. Elan agreed to assist the Company in qualifying a second manufacturer to manufacture and supply the Company with Fampridine-SR subject to its obligations to Elan.

*Securities Amendment Agreement.* In September 2003, the Company entered into a securities amendment agreement with Elan to modify certain provisions in some existing agreements between Elan and the Company. These included:

- The modification of certain transfer restrictions.
- The automatic conversion of the \$5 million limited recourse notes into the underlying common shares, if the board of directors of the Company determines that regulatory approval of Fampridine-SR is unlikely to be obtained, subject to Elan's consent.

- Repayment of the \$2.5 million full recourse note will start no later than September 30, 2008, either on a seven year schedule or a 15 year schedule depending on whether the Company deems the market opportunity to be economically significant, unless the Company extends the date because regulatory approval is considered likely in a timely manner, or unless the note had been already converted into common stock.

*Teva Collaboration Agreement.* In September 2003, the Company entered into a collaboration agreement with Teva Pharmaceuticals Industries Ltd. ("Teva") under which the Company was granted a co-exclusive license with Teva to jointly develop and promote in the United States products containing valrocemide.

The Company made an initial payment to Teva of \$2.0 million that was charged as research and development expenses for the year ended December 31, 2003, upon execution of the collaboration agreement, and was obligated to make payments to Teva relating to the development of valrocemide.

The Company and Teva amicably terminated the Collaboration Agreement as of June 27, 2005, and in connection with the termination the Company paid Teva approximately \$3.1 million. The Company and Teva have no further obligations to each other under the Collaboration Agreement.

## (12) Employee Benefit Plan

Effective September 1, 1999, the Company adopted a defined contribution 401(k) savings plan (the "401(k) plan") covering all employees of the Company. Participants may elect to defer a percentage of their annual pretax compensation to the 401(k) plan, subject to defined limitations. No contributions were made by the Company for the years ended June 30, 2002 and 2003, the six-month period ended December 31, 2003, the year ended December 31, 2004 and the six-month period ended June 30, 2005, respectively.

## (13) Commitments and Contingencies

During 1998, the Company entered into a lease agreement for its facility. During November 2000 and May 2001, the Company entered into amendments of the lease for its facility. Under the amendments, the Company increased the total leased space and extended the lease term for its original leased space. Future minimum commitments under all non-cancelable leases required subsequent to December 31, 2004 are as follows:

2005	\$ 641,808
2006	641,808
2007	641,808
2008	53,484
	<hr/>
	\$ 1,978,908

Rent expense under these operating leases during the years ended June 30, 2002 and 2003, the six-month period ended December 31, 2003, the year ended December 31, 2004 and the six-month period ended June 30, 2005 was \$468,309, \$652,339, \$334,348, \$670,413 and \$335,205 (unaudited) respectively.

Under the terms of the employment agreement with the Company's chief executive officer, the Company is obligated to pay severance under certain circumstances. If the employment agreement is terminated by the Company or by the Company's chief executive officer for reasons other than for cause, the Company must pay (i) an amount equal to the base salary the chief executive officer would have received during the fifteen month period immediately following the date of termination, plus (ii) bonus equal to last annual bonus received by chief executive officer multiplied by a fraction, the numerator of which shall be the number of days in the calendar year elapsed as of the termination date and the denominator of which shall be 365.

The Company is not a party to any material legal proceedings. It is the Company's policy to accrue for amounts related to legal matters if it is probable that a liability has been incurred and the amount is reasonably estimable.

#### **(14) Product Returns**

As part of the terms of the Zanaflex asset purchase agreement, any product returned within six months of acquisition date were the obligation of Elan. Beginning in January 2005, such returns became a liability of the Company. Through June 30, 2005, the Company has accepted \$2,997,457 (unaudited) in total product returns, of which \$1,661,153 was for product not sold by the Company. As the Company will accept product returned up to twelve months subsequent to its expiration date, the Company expects to continue to receive returns of Zanaflex tablets sold by Elan through June 2006. The Company has recorded an expense of \$4,081,910 in the year ending December 31, 2004 to record an estimated liability for these returns, of which \$2,420,756 (unaudited) remains as of June 30, 2005.

As part of the Zanaflex acquisition, the Company purchased certain tablet from Elan that expires within one year. The majority of this product was sold by the Company during July 2004 though March 2005. The Company has deferred revenue for this product due to the uncertainty of future returns. Included in deferred product revenue-tablets \$3,629,667 and \$3,034,043 (unaudited) as of December 31, 2004 and June 30, 2005, respectively related to the sale of short dated product. The Company recorded a charge totaling \$177,439 during 2004 to write-off the cost of the short dated product. Consigned inventory was \$67,524 and \$55,752 (unaudited) as of December 31, 2004 and June 30, 2005, respectively.

#### **(15) Zanaflex Asset Purchase Agreement**

The Company acquired all of Elan's U.S. sales, marketing and distribution rights to Zanaflex Capsules and Zanaflex tablets in July 2004 for \$2.0 million plus \$675,000 for finished goods inventory. The Company is also responsible for up to \$19.5 million in future contingent milestone payments based on cumulative gross sales of Zanaflex tablets and Zanaflex Capsules. These products are approved for the management of spasticity. Zanaflex tablets were approved by the FDA in 1996 and lost patent protection in 2002. There are currently 11 generic versions of Zanaflex tablets on the market. Zanaflex Capsules were approved by the FDA in 2002, but were never marketed by Elan. The Company began marketing Zanaflex Capsules in April 2005.

The Company is responsible for royalty payments to Elan and Novartis, based upon Net Sales of Zanaflex Capsules and tablets beginning on the closing date.

In connection with this transaction, the Company acquired the rights to the trademark "Zanaflex®", one issued U.S. patent and two patent applications related to Zanaflex Capsules, and the remaining tablet inventory on hand with Elan. Additionally, the Company assumed Elan's existing contract with Novartis to manufacture Zanaflex tablets and entered into a separate contract with Elan to manufacture Zanaflex Capsules. The Company separately launched Zanaflex Capsules in April 2005. The Company did not acquire any receivables, employees, facilities or fixed assets. The Company has allocated, on a relative fair value basis, the initial consideration paid to Elan to the assets acquired, principally the Zanaflex trademark \$200,000 and the encapsulation patent \$1.8 million. The Company has allocated \$150,000 and \$1,350,000 of the first milestone payment owed to the trademark and patent, respectively, upon achievement of that milestone's criteria in October 2004. There is no expected residual value of these intangible assets. As future milestone payments are made to Elan, such amounts will be allocated, on a relative fair value basis, to the assets acquired. The Company will amortize the allocated fair value of the trademark and patent over their estimated economic benefit to be achieved of approximately 2.5 years and 17 years, respectively.

Intangible Assets consisted of the following:

	<b>December 31, 2004</b>	<b>June 30, 2005</b>	<b>Estimated useful lives</b>
	(unaudited)		
Zanaflex patent	\$ 3,150,000	\$ 3,150,000	17 years
Zanaflex trademark	350,000	350,000	2.5 years
	3,500,000	3,500,000	
Less accumulated amortization	113,950	279,968	
	\$ 3,386,050	\$ 3,220,032	

The Company recorded \$114,000 and \$166,000 (unaudited) in amortization expense related to these intangible assets in the year ending December 31, 2004 and the six-month period ending June 30, 2005, respectively.

Estimated future amortization expense for these intangible assets subsequent to December 31, 2004 is as follows:

2005	\$ 332,036
2006	332,036
2007	182,479
2008	182,479
	\$ 1,029,030

## (16) Subsequent Events

### *Reverse Stock Split*

On September 18, 2005, the Company's Board of Directors approved a 1-for-1.3 reverse stock split, which will become effective immediately prior to the effective date of the Form S-1 registration statement filed in connection with the Company's initial public offering. All references to common stock, common shares outstanding, average number of common shares outstanding, per share amounts,

options and warrants and Elan notes payable in these financial statements and notes to financial statements have been restated to reflect the one-for-one point three common stock reverse split on a retroactive basis.

#### ***Stock Option and Restricted Share Grants (Unaudited)***

In August 2005, the Company granted 547,638 and 32,698 stock options to employees and non-employees, respectively, under the Plan. The stock options were issued with an exercise price of \$8.14 per share. 87,999 and 6,147 of the employee and non-employee grants, respectively, vested immediately upon the grant date of the award. The balance will be vested based on a four-year quarterly vesting schedule for employee grants and a three-year quarterly vesting schedule for non-employee grants. The fair value of the grant was \$3,096,210.

In August 2005, the Company granted 7,692 restricted shares to non-employees. 5,795 of these grants vested immediately upon the date of award of August 3, 2005, and the balance will be vested based on a one-year quarterly vesting schedule contingent upon certain restrictions defined in the restricted stock agreement.

#### ***Government Grants (Unaudited)***

In September 2005, the Company received three grants from the National Institutes of Health totaling \$494,030. These grants are expected to result in approximately \$82,000 in monthly grant revenue through March 31, 2006.

---

---

**Shares**



**Common Stock**

---

---

Prospectus  
, 2005

---

**Banc of America Securities LLC**

**Lazard Capital Markets**

**Piper Jaffray**

**SG Cowen & Co.**

Until , 2005, all dealers that buy, sell or trade the common stock may be required to deliver a prospectus, regardless of whether they are participating in this offering. This is in addition to the dealers' obligation to deliver a prospectus when acting as underwriters and with respect to their unsold allotments or subscriptions.

---

---

---

## Part II

### INFORMATION NOT REQUIRED IN PROSPECTUS

#### ITEM 13. OTHER EXPENSES OF ISSUANCE AND DISTRIBUTION

The following table sets forth our estimated costs and expenses (other than underwriting discounts) payable in connection with this offering.

SEC Registration Fee	\$ 10,152.00
NASD Filing Fee	\$ 9,125.00
Printing and Engraving Expenses	*
Legal Fees and Expenses	*
Accounting Fees and Expenses	*
Nasdaq National Market Listing Application Fee	*
Blue Sky Qualification Fees and Expenses	*
Transfer Agent and Registrar Fees and Expenses	*
Miscellaneous	*
 Total	\$ *

\* To be filed by amendment.

#### ITEM 14. INDEMNIFICATION OF DIRECTORS AND OFFICERS

Acorda Therapeutics, Inc., or the Registrant, is a Delaware corporation. Section 145 of the Delaware General Corporation Law, or the DGCL, grants each corporation organized thereunder the power to "indemnify any person who is or was a director, officer, employee or agent of a corporation or enterprise, against expenses, attorneys' fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, other than an action by or in the right of the corporation, by reason of being or having been in any such capacity if he acted in good faith in a manner reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful."

Section 102(b)(7) of the DGCL enables a corporation in its certificate of incorporation or an amendment thereto to eliminate or limit the personal liability of a director to the corporation or its stockholders for monetary damages for violations or the directors' fiduciary duty of care, except (i) for any breach of the director's duty of loyalty to the corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) pursuant to Section 174 of the DGCL (providing for liability of directors for unlawful payment of dividends or unlawful stock purchases or redemptions) or (iv) for any transaction from which a director derived an improper personal benefit.

Article Six of the Registrant's Amended and Restated Certificate of Incorporation (filed as Exhibit 3.1) provides that except as otherwise provided by the DGCL, no director of the Registrant shall be personally liable to the Registrant or its stockholders for monetary damages for breach of fiduciary duty as a director.

Article Six of the Registrant's Amended and Restated Certificate of Incorporation and Article Six of the Registrant's Amended Bylaws provide that, to the fullest extent permitted by the DGCL, the Registrant shall indemnify any current or former director or officer of the Registrant and may, at the discretion of the Board of Directors, indemnify any current or former employee or agent of the Registrant against all expenses (including attorneys' fees) judgments, fines and amounts paid in

settlement actually and reasonably incurred in connection with any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he or she is or was a director or officer of the Registrant, or is or was serving as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise.

Article Six of the Registrant's Amended and Restated Certificate of Incorporation also provides that the Registrant shall advance expenses incurred by a director or officer of the Registrant in defending any civil, criminal, administrative or investigative such action, suit or proceeding in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such advances if it shall ultimately be determined that he is not entitled to be indemnified by the Registrant as authorized by the Registrant's By-laws. In addition, upon the closing of this offering, our amended and restated certificate of incorporation (filed as exhibit 3.2) will provide that if a claim under the Registrant's By-laws is not paid in full by the Registrant within thirty days after a written claim has been received by the Registrant, the claimant may at any time thereafter bring suit against the Registrant to recover the unpaid amount of the claim, and if successful in whole or in part on the merits or otherwise in establishing his or her right to indemnification or to the advancement of expenses, the claimant shall be paid also the expense of prosecuting such claim.

## **ITEM 15. RECENT SALES OF UNREGISTERED SECURITIES**

Within the past three years, the Registrant has issued securities in the following transactions, each of which was exempt from the registration requirements of the Securities Act of 1933, as amended, as transactions by an issuer not involving any public offering thereunder. All of the below-referenced securities are deemed restricted securities for the purpose of the Securities Act.

In May 2003, we consummated a private placement of 112,790,233 shares of our Series J Convertible Preferred Stock to a group of accredited investors at a purchase price of \$0.49 per share for aggregate consideration of approximately \$55,267,000.

In March 2004, we consummated a private placement of 1,533,330 shares of our Series K Convertible Preferred Stock to a group of accredited investors at a purchase price of \$7.50 per share for aggregate consideration of approximately \$11,499,958.

### **Stock Options**

In the fourth quarter of 2002, we issued options to purchase 2,218 shares of our common stock with a fair market value price of \$2.60 to a number of our employees.

In the first quarter of 2003, we issued options to purchase 5,465 shares of our common stock with a fair market value price of \$2.60 to a number of our employees. We also issued 1,282 options to purchase our common stock with a fair market value price of \$2.60 to a non-employee director.

In the second quarter of 2003, we issued options to purchase 288 shares of our common stock with a fair market value price of \$2.60 to a number of our employees.

In the third quarter of 2003, we issued options to purchase 1,062,081 shares of our common stock with a fair market value price of \$2.60 to a number of our employees.

In the fourth quarter of 2003, we issued options to purchase 48,077 shares of our common stock with a fair market value price of \$2.60 to a number of our employees. We also issued 1,924 options to purchase our common stock with a fair market value price of \$2.60 to a number of non-employees.

In the first quarter of 2004, we issued options to purchase 19,103 shares of our common stock with a fair market value price of \$9.75 to a number of our employees. We also issued 1,924 options to purchase our common stock with a fair market value price of \$9.75 to a number of non-employees.

In the second quarter of 2004, we issued options to purchase 308 shares of our common stock with a fair market value price of \$9.75 to a number of our employees.

In the third quarter of 2004, we issued options to purchase 1,538 shares of our common stock with a fair market value price of \$9.75 to a number of our employees.

In the fourth quarter of 2004, we issued options to purchase 44,615 shares of our common stock with a fair market value price of \$9.75 to a number of our employees.

In the first quarter of 2005, we issued options to purchase 34,615 shares of our common stock with a fair market value price of \$8.14 to a number of our employees.

In the second quarter of 2005, we issued options to purchase 846 shares of our common stock with a fair market value price of \$8.14 to a number of our employees.

In the third quarter of 2005, we issued options to purchase 590,715 shares of our common stock with a fair market value price of \$8.14 to a number of our employees. We also issued 32,698 options to purchase our common stock with a fair market value price of \$8.14 to a non-employee director.

### **Restricted Shares**

On March 9, 2004, and August 6, 2004, we issued 1,134,423 and 5,077 restricted shares, respectively, to a number of our employees.

On August 3, 2005, we issued 7,692 restricted shares to two of our non-employee directors.

### **Warrants**

On January 28, 2005, in connection with entering into our senior secured term loan with GE Capital, we issued to GE Capital a warrant to purchase up to \$300,000 worth of shares of our preferred stock (or, if we have consummated our initial public offering, shares of our common stock) in an amount and at a price to be determined pursuant to the terms thereof.

## **ITEM 16. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES**

(a) Exhibit Index

A list of exhibits filed with this registration statement on Form S-1 is set forth on the Exhibit Index and is incorporated in this Item 16(a) by reference.

(b) Financial Statement Schedules

None

## **ITEM 17. UNDERTAKINGS**

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrants have been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

(1) The undersigned registrant hereby undertakes to provide to the underwriter at the closing specified in the underwriting agreements, certificates in such denominations and registered in such names as required by the underwriter to permit prompt delivery to each purchaser.

(2) The undersigned registrant hereby undertakes that:

(a) For purposes of determining any liability under the Securities Act, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective.

(b) For purposes of determining any liability under the Securities Act, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offering therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

## SIGNATURES

Pursuant to the requirements of the Securities Act, the Registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of New York, State of New York, on October 5, 2005

By: /s/ RON COHEN

---

Ron Cohen,  
*President and Chief Executive Officer*

## POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Ron Cohen and David Lawrence, and each of them (with full power of each to act alone), severally, as his or her true and lawful attorneys-in-fact and agent, with full power of substitution and resubstitution, for him or her and in his or her name, place, and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments, exhibits thereto and other documents in connection therewith) to this Registration Statement and any subsequent registration statement filed by the registrant pursuant to Rule 462(b) of the Securities Act of 1933, as amended, which relates to this Registration Statement, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agent full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agent, or any of them, or their substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated:

Signature	Title	Date
/s/ RON COHEN	President, Chief Executive Officer and Director (Principal Executive Officer)	October 5, 2005
Ron Cohen, M.D.		
/s/ DAVID LAWRENCE	Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	October 5, 2005
David Lawrence, M.B.A.		
/s/ STANDISH M. FLEMING	Director	October 5, 2005
Standish M. Fleming, M.B.A.		
/s/ JOHN FRIEDMAN	Director	October 5, 2005
John H. Friedman, J.D.		

/s/ SANDRA PANEM	Director	October 5, 2005
Sandra Panem, Ph.D.		
/s/ BARCLAY A. PHILLIPS	Director	October 5, 2005
Barclay A. Phillips		
/s/ MARK R.E. PINNEY	Director	October 5, 2005
Mark R.E. Pinney, M.B.A., C.F.A., M.Sc.		
/s/ STEVEN M. RAUSCHER	Director	October 5, 2005
Steven M. Rauscher, M.B.A.		
/s/ MICHAEL STEINMETZ	Director	October 5, 2005
Michael Steinmetz, Ph.D.		
/s/ WISE YOUNG	Director	October 5, 2005
Wise Young, Ph.D., M.D.		

## EXHIBIT INDEX

<b>Exhibit No.</b>	<b>Description</b>
1.1*	Form of Underwriting Agreement
3.1	Amended and Restated Certificate of Incorporation
3.2	Amended Bylaws
3.3	Form of Post-IPO Amended and Restated Certificate of Incorporation
3.4	Form of Post-IPO Amended Bylaws
4.1	Specimen Stock Certificate
4.2	Warrant to purchase 100,000 shares of Series B Preferred Stock, \$2.00 par value per share, dated February 4, 2002, issued by the Registrant to Elan International Services, Ltd.
4.3*	Warrant to purchase 40,000 shares of common stock, \$0.10 par value per share, dated May 1, 1996, issued by the Registrant to Mark Noble and Margo Meyer
4.4*	Warrant to purchase \$300,000 worth of Warrant Shares, dated January 28, 2005, issued by the Registrant to General Electric Capital Corporation
5.1*	Opinion of Covington & Burling
10.1	Acorda Therapeutics 1999 Employee Stock Option Plan
10.2	Amendment to 1999 Employee Stock Option Plan
10.3	Amendment No. 2 to 1999 Employee Stock Option Plan
10.4	Sixth Amended and Restated Registration Rights Agreement, dated March 3, 2004, by and among the Registrant and certain stockholders named therein
10.5	Employment Agreement, dated August 11, 2002, by and between the Registrant and Ron Cohen
10.6	Amendment to August 11, 2002 Employment Agreement, dated September 26, 2005, by and between the Registrant and Ron Cohen
10.7	Letter Agreement, dated November 30, 2004, by and between the Registrant and Mark Pinney
10.8**	Amended and Restated License Agreement, dated September 26, 2003, by and between the Registrant and Elan Corporation, plc.
10.9**	Supply Agreement, dated September 26, 2003, by and between the Registrant and Elan Corporation, plc.
10.10**	License Agreement, dated September 26, 2003, by and between the Registrant and Rush-Presbyterian-St. Luke's Medical Center
10.11	Side Agreement, dated September 26, 2003, by and among the Registrant, Rush-Presbyterian-St. Luke's Medical Center, and Elan Corporation, plc.
10.12**	Payment Agreement, dated September 26, 2003, by and among the Registrant, Rush-Presbyterian-St. Luke's Medical Center, and Elan Corporation, plc.
10.13**	Amendment No. 1 to the Payment Agreement, dated as of October 27, 2003, by and between the Registrant and Elan Corporation, plc.
10.14**	Amended and Restated License Agreement, dated August 1, 2003, by and between the Registrant and Canadian Spinal Research Organization
10.15**	License Agreement, dated February 3, 2003, by and between the Registrant and Cornell Research Foundation, Inc.
10.16**	License Agreement, dated November 12, 2002, by and between the Registrant and CeNeS Pharmaceuticals, plc

10.17\*\* License Agreement, dated November 12, 2002, by and between the Registrant and CeNeS Pharmaceuticals, plc

---

- 10.18\*\* License Agreement, dated September 8, 2000, by and between the Registrant and Mayo Foundation for Medical Education and Research
- 10.19\*\* Side Letter Agreement, dated June 21, 2005, by and between the Registrant and Mayo Foundation for Medical Education and Research
- 10.20\*\* Asset Purchase Agreement, dated as of July 21, 2004, by and between the Registrant and Elan Pharmaceuticals, Inc.
- 10.21\*\* Zanaflex Supply Agreement, dated as of July 21, 2004, by and between the Registrant and Elan Pharma International Limited
- 10.22\*\* Assignment and Assumption Agreement, dated as of July 21, 2004, by and among the Registrant, Elan Pharmaceuticals, Inc., and Novartis Pharma AG
- 10.23\*\* License Agreement, dated April 17, 1991, by and between Sandoz Pharma, now Novartis Pharma AG and Athena Neurosciences, Inc., now Elan Pharmaceuticals, Inc.
- 10.24 Patent Assignment Agreement, dated as of July 21, 2004, by and between the Registrant and Elan Pharmaceuticals, Inc.
- 10.25 Trademark License Agreement, dated as of July 21, 2004, by and between the Registrant and Elan Pharmaceuticals, Inc.
- 10.26\*\* Agreement Relating to Additional Trademark, dated as of July 2005, by and between the Registrant and Elan Pharmaceuticals, Inc.
- 10.27 Domain Name Assignment Agreement, dated as of July 21, 2004, by and between the Registrant and Elan Pharmaceuticals, Inc.
- 10.28 Bill of Sale and Assignment and Assumption Agreement, dated as of July 21, 2004, by and between the Registrant and Elan Pharmaceuticals, Inc.
- 10.29 Limited Recourse Convertible Promissory Note issued to Elan International Services, Ltd.
- 10.30 Full Recourse Convertible Promissory Note issued to Elan International Services, Ltd.
- 10.31 Securities Amendment Agreement, dated September 26, 2003, by and among the Registrant, Elan Corporation plc and Elan International Services, Ltd.
- 10.32\*\* Fampridine Tablets Technical Transfer Program Proposal for Commercial Registration, dated February 26, 2003, by and between the Registrant and Patheon, Inc.
- 10.33\*\* Syndicated Sales Force Agreement, dated as of August 1, 2005, between the Registrant and Cardinal Health PTS, LLC
- 10.34\*\* License Agreement, dated as of December 19, 2003, by and among the Registrant, Cambridge University Technical Services Limited, and King's College London
- 10.35 Promissory Note issued to General Electric Capital Corporation
- 21.1 List of Subsidiaries of the Registrant
- 23.1 Consent of KPMG LLP, Independent Registered Public Accounting Firm
- 23.2\* Consent of Covington & Burling (included in Exhibit 5.1).
- 24.1 Power of Attorney (included on signature page).

---

\* To be filed by amendment.

\*\* Confidential treatment has been requested for portions of this Exhibit, which portions are omitted and filed separately with the Securities and Exchange Commission.

---

## QuickLinks

### TABLE OF CONTENTS

#### SUMMARY

Overview

Our Product Pipeline

Our Strategy

Risks Associated with our Business

Corporate Information

#### THE OFFERING

#### SUMMARY CONSOLIDATED FINANCIAL DATA

#### RISK FACTORS

#### FORWARD-LOOKING STATEMENTS

USE OF PROCEEDS

DIVIDEND POLICY

CAPITALIZATION

DILUTION

#### SELECTED CONSOLIDATED FINANCIAL DATA

#### MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

#### BUSINESS

Figure 1. Average Blood Concentration Over Time

#### MANAGEMENT

#### SUMMARY COMPENSATION TABLE

#### CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

#### PRINCIPAL STOCKHOLDERS

#### DESCRIPTION OF CAPITAL STOCK

#### SHARES ELIGIBLE FOR FUTURE SALE

#### CERTAIN UNITED STATES FEDERAL INCOME AND ESTATE TAX CONSEQUENCES TO NON-U.S. HOLDERS

#### UNDERWRITING

#### LEGAL MATTERS

#### EXPERTS

#### WHERE YOU CAN FIND ADDITIONAL INFORMATION

#### ACORDA THERAPEUTICS, INC. AND SUBSIDIARY INDEX TO CONSOLIDATED FINANCIAL STATEMENTS

#### REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

#### ACORDA THERAPEUTICS, INC. AND SUBSIDIARY Consolidated Balance Sheets

#### ACORDA THERAPEUTICS, INC. AND SUBSIDIARY Consolidated Statements of Operations

#### ACORDA THERAPEUTICS, INC. AND SUBSIDIARY Consolidated Statements of Cash Flows

#### ACORDA THERAPEUTICS, INC. AND SUBSIDIARY Notes to Consolidated Financial Statements

#### Part II INFORMATION NOT REQUIRED IN PROSPECTUS

#### SIGNATURES

#### POWER OF ATTORNEY

#### EXHIBIT INDEX

## Exhibit 3.1

### **AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF ACORDA THERAPEUTICS, INC.**

Acorda Therapeutics, Inc., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the "Corporation"), does hereby certify as follows:

1. The name of the Corporation is Acorda Therapeutics, Inc. The date of filing of its original Certificate of Incorporation with the Secretary of State was March 17, 1995.

2. The Amended and Restated Certificate of Incorporation of Acorda Therapeutics, Inc., in the form attached hereto as Exhibit A, has been duly adopted in accordance with the provisions of Sections 228, 242 and 245 of the General Corporation Law of the State of Delaware by the directors and stockholders of the Corporation.

3. The Amended and Restated Certificate of Incorporation so adopted reads in its entirety as set forth in Exhibit A attached hereto and is incorporated herein by reference.

4. This Certificate shall be effective on the date of filing with the Secretary of State of the State of Delaware.

IN WITNESS WHEREOF, the Corporation has caused this Amended and Restated Certificate of Incorporation to be

executed by its President on this 1<sup>st</sup> day of March, 2004.

Acorda Therapeutics, Inc.

By      /s/ Ron Cohen  
Ron Cohen, M.D., President

---

*Exhibit A*

**AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION OF  
ACORDA THERAPEUTICS, INC.**

**ARTICLE 1**

1.1. Name. The name of the corporation is Acorda Therapeutics, Inc. (the “Corporation”).

**ARTICLE 2**

2.1. Registered Agent and Office. The address of the Corporation’s registered office in the State of Delaware is 1209 Orange Street in the City of Wilmington, County of New Castle, Delaware 19808. The name of its registered agent at such address is The Corporation Trust Company.

**ARTICLE 3**

3.1. Purposes. The purposes for which the Corporation is formed are to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware (the “DGCL”).

**ARTICLE 4**

4.1. Authorized Capital. The aggregate number of shares of all classes of stock which the Corporation shall have authority to issue is 401,754,865, such shares being designated as follows: (i) 260,000,000 shares of Common Stock, par value \$0.001 per share (the “Common Stock”), and (ii) 141,754,865 shares of Preferred Stock, par value \$0.001 per share (the “Preferred Stock”).

4.2. Preferred Stock.

4.2.1. Designation of Preferred Stock.

(a) The Preferred Stock is divided into eleven series as follows: 1,646,068 shares of Preferred Stock are denominated as Series A Preferred Stock (the “Series A Preferred Stock”); 2,250,000 shares of Preferred Stock are denominated as Series B Preferred Stock (the “Series B Preferred Stock”); 333,333 shares of Preferred Stock are denominated as Series C Preferred Stock (the “Series C Preferred Stock”); 400,000 shares of Preferred Stock are denominated as Series D Preferred Stock (the “Series D Preferred Stock”); 1,844,289 shares are denominated as Series E 1 Preferred Stock (the “Series E 1 Preferred Stock”); 5,628,323 shares are denominated as Series E 2 Preferred Stock (the “Series E 2 Preferred Stock”) (collectively, Series E 1 Preferred Stock and Series E 2 Preferred Stock are referred to as the “Series E Preferred Stock”); 2,300,000 shares are denominated as Series F Preferred Stock (the “Series F Preferred Stock”); 1,250,000 shares are denominated as Series G

---

Preferred Stock (the “Series G Preferred Stock”); 1,575,229 shares are denominated as Series H Preferred Stock (the “Series H Preferred Stock”); 10,204,047 shares are denominated as Series I Preferred Stock (the “Series I Preferred Stock”); 112,790,233 shares are denominated as Series J Preferred Stock (the “Series J Preferred Stock”) and 1,533,330 shares are denominated as Series K Preferred Stock (the “Series K Preferred Stock”). The Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series F Preferred Stock, Series G Preferred Stock, Series H Preferred Stock, Series I Preferred Stock and any other series of Preferred Stock hereafter created after the Effective Date (as hereafter defined) which has rights, preferences or privileges junior to those of the Series J Preferred Stock and Series K Preferred Stock with respect to dividends, distributions, liquidation preference or redemption are sometimes referred to collectively herein as the “Junior Preferred Stock”.

(b) Authorized and unissued shares of Series G Preferred Stock may be issued only upon the exercise of the conversion right provided for in Section 3 of the Corporation’s “Full Recourse Convertible Promissory Note” (the “Convertible Note”) dated January 22, 1997 in the principal amount of \$2,500,000 made payable to Elan International Services, Ltd., a Bermuda corporation.

#### 4.2.2. Dividends and Distributions .

(a) Holders of shares of Series J Preferred Stock and Series K Preferred Stock shall be entitled to receive a preferential cumulative dividend, out of any assets legally available therefor, at a rate of \$.0392 and \$.60, respectively, per share per annum (as adjusted for any stock dividends, combinations or splits with respect to such shares) when, as and if declared by the Board of Directors of the Corporation (the “Board of Directors”), prior and in preference to any declaration or payment of any dividend on any Junior Preferred Stock or the Common Stock. Such dividends shall be deemed to accrue on each share of the Series J Preferred Stock and Series K Preferred Stock commencing on its issuance date, whether or not earned or declared and whether or not there are profits, surplus or other funds of the Corporation legally available for the payment of dividends but shall be payable only when such dividends are declared by the Board of Directors or upon a Liquidation or redemption as provided herein. Dividends shall be cumulative but not compound. If such dividends in respect of any prior or current dividend period shall not have been declared and paid or if there shall not have been a sum sufficient for the payment thereof set apart for later payment, the deficiency shall first be fully paid before any dividend or other distribution shall be paid or declared and set apart with respect to any class of the Corporation’s capital stock, now or hereafter outstanding.

(b) After payment of the dividends required by Section 4.2.2(a), any additional dividends declared shall be distributed among all holders of Common Stock and Preferred Stock in proportion to the number of shares of Common Stock held by each such holder (or with respect to a holder of Preferred Stock the number of shares of Common Stock into which the holder’s Preferred Stock is convertible). No dividends shall be declared or paid on the Common Stock unless and until the holders of Preferred Stock shall have received all declared or accrued but unpaid dividends to which they are entitled under this Section 4.2.2. If available funds are insufficient to pay the holders Series J Preferred Stock and Series K Preferred

Stock the full aforesaid dividend amounts, dividends will be paid to such holders pro rata in accordance with the amount of accrued and unpaid dividends per share.

(c) Notwithstanding anything to the contrary contained herein, in the event the Corporation shall make or issue, or shall fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution with respect to Common Stock payable in (i) securities of the Corporation other than shares of Common Stock or (ii) assets, then, and in each such event, the holders of Series J Preferred Stock and Series K Preferred Stock shall receive prior to and in preference of any such dividend or distribution on the Common Stock securities and assets in amounts equivalent to the cash that would have been required to be distributed pursuant to Section 4.2.2(a), and then the holders of Preferred Stock (including Series J Preferred Stock and Series K Preferred Stock) shall receive, at the same time distribution is made to the holders of Common Stock, the number of securities or other assets which they would have received had their Preferred Stock been converted into Common Stock, immediately prior to the record date for determining holders of Common Stock entitled to receive such distribution.

(d) The Corporation shall not declare or pay any dividends on, or purchase, redeem, retire or otherwise acquire for value, any shares of its capital stock junior to the Preferred Stock (or rights, options or warrants to purchase such shares) now or hereafter outstanding, return any capital or make any distributions of assets to the holders of any capital stock junior to the Preferred Stock; or permit any Subsidiary to do any of the foregoing. "Subsidiary" or "Subsidiaries" means any corporation, partnership, or joint venture or other entity of which the Corporation and/or any of its other Subsidiaries (as herein defined) directly or indirectly owns at the time at least fifty percent (50%) of the outstanding voting shares or similar interests. Notwithstanding the foregoing, Subsidiaries may declare and make payment of cash and stock dividends, return capital and make distributions of assets to the Corporation, and nothing contained in the foregoing shall prevent the Corporation from: (i) effecting a stock split or declaring or paying any dividend consisting of shares of any class of capital stock paid to the holders of shares of such class of capital stock subject to the provisions of this Certificate; (ii) complying with any specific provision of the terms of the Preferred Stock in accordance with its terms; (iii) declaring and paying all accrued dividends on the Preferred Stock, or (iv) redeeming or repurchasing any stock of a deceased stockholder out of proceeds of insurance held by the Corporation on that stockholder's life or redeeming or repurchasing any stock of any director, officer, employee, advisor, consultant or other person or entity, pursuant to a stock repurchase agreement or stock restriction agreement under which the Corporation has the right or obligation to repurchase such shares in the event of death, termination of employment or of the consulting arrangement, or other similar discontinuation of a business relationship.

#### 4.2.3. Liquidation.

(a) The holders of Preferred Stock shall have preferential rights to the assets of the Corporation upon the occurrence of a "Liquidation". For purposes of this Section 4.2.3, a "Liquidation" means a liquidation, dissolution, or winding up of the Corporation, whether voluntary or involuntary, and shall also be deemed to be occasioned by, and to include (but not be limited to) (i) the Corporation's sale, license or other disposition of all or substantially all of its assets, (ii) or the merger, share exchange, consolidation or other

reorganization or combination of the Corporation with or into another entity (A) resulting in the exchange of the outstanding shares of the Corporation for securities or consideration issued, or caused to be issued, by the other entity or its subsidiary or (B) whereby the Corporation is the surviving entity, but the Corporation's stockholders immediately prior to the consummation of such merger or consolidation own less than fifty one percent (51%) of the voting power of the Corporation or the acquiring entity immediately following the consummation of such merger, share exchange, consolidation or reorganization or combination. An event set forth in clauses (A) and (B) of the preceding sentence shall not be treated as a Liquidation if the holders of a majority of the then outstanding shares of Series J Preferred Stock and Series K Preferred Stock voting together as a separate class on an as if converted to Common Stock basis, and the holders of a majority of the Junior Preferred Stock voting separately as a class voting on an as if converted to Common Stock basis each elect not to treat for event as a Liquidation.

(b) Upon a Liquidation, before any distribution or payment is made to any holders of Junior Preferred Stock or Common Stock, the holders of each share of Series J Preferred Stock and Series K Preferred Stock shall be entitled to be paid out of the assets of the Corporation available for distribution to holders of the Corporation's capital stock of all classes, whether such assets are capital, surplus or earnings ("Available Assets"), an amount equal to the greater of:

(i) With respect to (I) the Series J Preferred Stock, the sum of (A) an amount per share of Series J Preferred Stock equal to the Original Issue Price of the Series J Preferred Stock (subject to equitable adjustment for any stock dividend, stock split, combination, reorganization, recapitalization, reclassification or other similar event involving a change in the capital structure of the Preferred Stock) plus (B) all accrued or declared but unpaid dividends on such share of Series J Preferred Stock, up to and including the date upon which full payment shall be tendered to the holders of Series J Preferred Stock with respect to such Liquidation; provided, however, that the amount payable pursuant to clause (B) shall not exceed the Original Issue Price of the Series J Preferred Stock (subject to equitable adjustment for any stock dividend, stock split, combination, reorganization, recapitalization, reclassification or other similar event involving a change in the capital structure of the Series J Preferred Stock) less the aggregate amount of the dividends paid in cash on such share of Series J Preferred Stock prior to such liquidation event and (II) with respect to the Series K Preferred Stock, the sum of (A) an amount per share of Series K Preferred Stock equal to the Original Issue Price of the Series K Preferred Stock (subject to equitable adjustment for any stock dividend, stock split, combination, reorganization, recapitalization, reclassification or other similar event involving a change in the capital structure of the Preferred Stock) plus (B) all accrued or declared but unpaid dividends on such share of Series K Preferred Stock, up to and including the date upon which full payment shall be tendered to the holders of Series K Preferred Stock with respect to such Liquidation; provided, however, that the amount payable pursuant to clause (B) shall not exceed the Original Issue Price of the Series K Preferred Stock (subject to equitable adjustment for any stock dividend, stock split, combination, reorganization, recapitalization, reclassification or other similar event involving a change in the capital structure of the Series K Preferred Stock) less the aggregate amount of the dividends paid in cash on such share of Series K Preferred Stock prior to such liquidation event; or

(ii) such amount per share as would have been payable had each share of Preferred Stock which is convertible into Common Stock (pursuant to Section 4.2.4) been so converted immediately prior to such Liquidation plus all accrued and unpaid dividends on such share up to and including the date on which payment shall be made to the holder of such share with respect to such Liquidation.

(iii) If upon a Liquidation the Available Assets shall be insufficient to pay the holders of Series J Preferred Stock and Series K Preferred Stock the full aforesaid liquidation amounts to which they are entitled, then Available Assets shall be distributed to such holders in proportion to the product of the above liquidation preference of each such share set forth in this Section 4.2.3 (b) and the number of such shares owned by each such holder.

(c) Upon a Liquidation, after payment shall have been made to the holders of Series J Preferred Stock and Series K Preferred Stock of the full amounts to which they shall be entitled under this Section 4.2.3(b) and prior and in preference to any distribution or payment to any holders of Common Stock but subject to the liquidation rights and preferences of any class or series of Preferred Stock designated in the future to be senior to the Junior Preferred Stock with respect to liquidation preference, the holders of Series I Preferred Stock, Series E Preferred Stock, Series F Preferred Stock and Series H Preferred Stock shall be entitled to receive out of the Available Assets, on a pro rata basis, an amount for each share of Series I Preferred Stock, Series E Preferred Stock, Series F Preferred Stock and Series H Preferred Stock, respectively, held by such holder equal to the sum of (A) (i) \$3.89 for each outstanding share of Series I Preferred Stock, (ii) \$1.3069 for each such outstanding share of Series E 1 Preferred Stock, (iii) \$1.0707 for each such outstanding share of Series E 2 Preferred Stock, (iv) \$1.0907 for each such outstanding share of Series F Preferred Stock and (v) \$1.3591 for each such outstanding share of Series H Preferred Stock (in each case as adjusted for any stock dividends, combinations or splits with respect to such shares) and (B) in each case, an amount equal to all declared but unpaid dividends on each such share issued. If upon a Liquidation the remaining Available Assets are insufficient to pay the holders of Series I Preferred Stock, Series E Preferred Stock, Series F Preferred Stock and Series H Preferred Stock the full aforesaid preferential amounts set forth in this Section 4.2.3(c), then the remaining Available Assets shall be distributed ratably among the holders of the Series I Preferred Stock, Series E Preferred Stock, Series F Preferred Stock and Series H Preferred Stock in proportion to the product of the above liquidation preference of each such share set forth in this Section 4.2.3(c) and the number of such shares owned by each such holder.

(d) Upon a Liquidation, after payment shall have been made to the holders of Series J Preferred Stock and Series K Preferred Stock of the full amounts to which they shall be entitled under Section 4.2.3(b) and after payment shall have been made to the holders of the Series E Preferred Stock, Series F Preferred Stock, Series H Preferred Stock and Series I Preferred Stock of the full amounts to which they shall be entitled under Section 4.2.3(c), and prior and in preference to any distribution or payment to any holders of Common Stock but subject to the liquidation rights and preferences of any class or series of Preferred Stock designated in the future to be senior to the Junior Preferred Stock with respect to liquidation preference, the holders of each outstanding share of Series E 1 Preferred Stock, Series E 2 Preferred Stock, Series F Preferred Stock and Series H Preferred Stock shall be entitled to be

paid out of remaining Available Assets an amount per share equal to \$0.2556, \$0.2093, \$0.21355 and \$0.2659, respectively, (in each case as adjusted for any stock dividends, combinations or splits with respect to such shares) plus an amount equal to all declared but unpaid dividends thereon, as applicable. If upon a Liquidation the remaining Available Assets are insufficient to pay the holders Series E Preferred Stock, Series F Preferred Stock and Series H Preferred Stock to the full aforesaid preferential amounts set forth in this Section 4.2.3(d), then the remaining Available Assets shall be distributed ratably among the holders of the Series E Preferred Stack, Series F Preferred Stock and Series H Preferred Stock in proportion to the product of the above liquidation preference of each such share set forth in this Section 4.2.3(d) and the number of such shares owned by each such holder.

(e) Upon a Liquidation, after payment shall have been made to the holders of Series J Preferred Stock and Series K Preferred Stock of the full amounts to which they shall be entitled under Section 4.2.3(b), after payment shall have been made to the holders of the Series E Preferred Stock, Series F Preferred Stock, Series H Preferred Stock and Series I Preferred Stock of the full amounts to which they shall be entitled under Section 4.2.3(c) and after payment shall have been made to the holders of Series E 1 Preferred Stock, Series E 2 Preferred Stock, Series F Preferred Stock and Series H Preferred Stock of the full amounts to which they are entitled under Section 4.2.3(d), and prior and in preference to any distribution or payment to any holders of Common Stock but subject to the liquidation rights and preferences of any class or series of Preferred Stock designated to be senior to the Junior Preferred Stock with respect to liquidation preference, the holders of each outstanding share of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E 1 Preferred Stock, Series E 2 Preferred Stock, Series F Preferred Stock, Series G Preferred Stock and Series H Preferred Stock shall be entitled to be paid out of remaining Available Assets an amount per share up to and including such amounts paid in accordance with the provisions of subsections (c) and (d) above, equal to \$1.00, \$2.00, \$3.00, \$12.50, \$3.125, \$2.56, \$5.217, the greater of \$2.00 and 80% of the closing price per share of the Institutional Financing (as defined below) most recently completed by the Company prior to the issuance of the Series G Preferred Stock (the "Series G Issuance Price") and \$3.25, respectively (in each case as adjusted for any stock dividends, combinations or splits with respect to such shares) (with respect to each class of Preferred Stock, an "Original Price"), plus an amount equal to all declared but unpaid dividends thereon, as applicable. If upon a Liquidation the remaining Available Assets are insufficient to pay the holders of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E 1 Preferred Stock, Series E 2 Preferred Stock, Series F Preferred Stock, Series G Preferred Stock and Series H Preferred Stock the full aforesaid preferential amounts set forth in this Section 4.2.3(e), then the remaining Available Assets shall be distributed ratably, in the proportion to the product of the above liquidation preference of each share and the number of such shares owned by each such holder, in the following order of priority: (i) first, pro rata among (1) the holders of the outstanding shares of Series H Preferred Stock in an amount per share equal to fifty (50%) percent of the Original Price for such outstanding shares, plus declared but unpaid dividends, (2) the holders of the outstanding shares of Series F Preferred Stock in an amount per share equal to twenty five (25%) percent of the Original Price for such shares, plus declared but unpaid dividends, and (3) the holders of the outstanding shares of Series E 1 Preferred Stock and Series E 2 Preferred Stock in an amount per share equal to fifty (50%) of the Original Prices for such outstanding shares, plus declared but unpaid dividends; and (ii) second, pro rata among (1) the holders of the outstanding shares of

Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series G Preferred Stock, in the same relative proportion as the Original Prices of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock and Series G Preferred Stock, plus declared but unpaid dividends, and (2) the holders of the Series F Preferred Stock in an amount per share equal to fifty percent (50%) of the Original Price for such shares, plus declared but unpaid dividends.

(f) Upon conversion of shares of Preferred Stock into Common Stock pursuant to Section 4.2.4, the holders of such Common Stock shall not be entitled to any preferential payment or distribution in case of a Liquidation, but shall share ratably in any distribution of the assets of the Corporation to all holders of Common Stock.

(g) In any Liquidation, if the consideration received by the Corporation is other than cash, its value will be deemed its fair market value, as determined in good faith by the Board of Directors of the Corporation or, if the Board so decides, by a committee of independent directors (in either case, the Board or the committee may retain an independent investment banking firm to advise with respect to fair market value); however, if the non cash consideration is securities, the fair market value shall be determined as follows:

(i) if the securities are traded on a securities exchange or through the Nasdaq Stock Market, Inc. (“Nasdaq”), the average of the closing prices of the securities on such exchange or Nasdaq during the thirty day period ending three (3) days prior to the closing;

(ii) if the securities are actively traded over the counter but not on Nasdaq, the value shall be deemed to be the average of the closing bid prices over the thirty day period ending three (3) days prior to closing; and

(iii) if there is no active public market for the securities, the fair market value thereof, as mutually determined by the Corporation and the holders of a majority of the Preferred Stock voting as a single class on an as if converted to Common Stock basis.

4.2 4 . Conversion. The holders of the Preferred Stock shall have conversion rights as follows (the “Conversion Rights”):

(a) Right to Convert . Each holder of record of shares of Preferred Stock may, without the payment of any additional consideration, at any time, upon surrender to the Corporation of the certificates therefor at the principal office of the Corporation or at such other place as the Corporation shall designate, convert all or any part of such holder’s shares of Preferred Stock into such number of fully paid and non-assessable shares of Common Stock of the Corporation (as such Common Stock shall then be constituted) equal to (i) in the case of the Series A Preferred Stock, the product of (x) the number of shares of Series A Preferred Stock that such holder shall then surrender to the Corporation and (y) the number determined by dividing \$1.00 (the “Series A Original Issue Price”) by the Series A Conversion Price (as hereinafter defined) in effect at the time of conversion; (ii) in the case of the Series B Preferred Stock, the product of (x) the number of shares of Series B Preferred Stock that such

holder shall then surrender to the Corporation and (y) the number determined by dividing \$2.00 (the “Series B Original Issue Price”) by the Series B Conversion Price (as hereinafter defined) in effect at the time of conversion; (iii) in the case of the Series C Preferred Stock, the product of (x) the number of shares of Series C Preferred Stock that such holder shall then surrender to the Corporation and (y) the number determined by dividing \$3.00 (the “Series C Original Issue Price”) by the Series C Conversion Price (as hereinafter defined) in effect at the time of conversion; (iv) in the case of the Series D Preferred Stock, the product of (x) the number of shares of Series D Preferred Stock that such holder shall then surrender to the Corporation and (y) the number determined by dividing \$2.00 (the “Series D Original Issue Price”) by the Series D Conversion Price (as hereinafter defined) in effect at the time of the conversion; (v) in the case of the Series E-1 Preferred Stock, the product of (x) the number of shares of Series E-1 Preferred Stock that such holder shall then surrender to the Corporation and (y) the number determined by dividing \$2.70 (the “Series E-1 Original Issues Price”) by the Series E-1 Conversion Price (as hereinafter defined) in effect at the time of the conversion; (vi) in the case of Series E-2 Preferred Stock, the product of (x) the number of shares of Series E-2 Preferred Stock that such holder shall then surrender to the Corporation and (y) the number determined by dividing \$2.70 (the “Series E-2 Original Issue Price”) by the Series E-2 Conversion Price (as hereinafter defined) in effect at the time of the conversion; (vii) in the case of the Series F Preferred Stock, the product of (x) the number of shares of Series F Preferred Stock that such holder shall then surrender to the Corporation and (y) the number determined by dividing \$2.70 (the “Series F Original Issue Price”) by the Series F Conversion Price (as hereinafter defined) in effect at the time of the conversion; (viii) in the case of Series G Preferred Stock, the product of (x) the number of shares of Series G Preferred Stock that such holder shall then surrender to the Corporation and (y) the number determined by dividing (I) the greater of \$2.00 or 80% of the closing price per share of the most recently completed bona fide equity financing of the Corporation with any institutional or venture capital or similar financing source (the “Institutional Financing”) most recently completed by the Corporation prior to the issuance of the Series G Preferred Stock (the “Series G Original Issuance Price”) by (II) the Series G Conversion Price (as hereinafter defined) in effect at the time of conversion; (ix) in the case of Series H Preferred Stock, the product of (x) the number of shares of Series H Preferred Stock that such holder shall then surrender to the Corporation and (y) the number determined by dividing \$3.25 (the “Series H Original Issue Price”) by the Series H Conversion Price (as hereinafter defined) in effect at the time of the conversion; (x) in the case of the Series I Preferred Stock, the product of (x) the number of shares of Series I Preferred Stock that such holder shall then surrender to the Corporation and (y) the number determined by dividing \$3.89 (the “Series I Original Issue Price”) by the Series I Conversion Price (as hereinafter defined) in effect the time of the conversion; (xi) in the case of the Series J Preferred Stock, the product of (x) the number of shares of Series J Preferred Stock that such holder shall then surrender to the Corporation and (y) the number determined by dividing \$.49 (the “Series J Original Issue Price”) by the Series J Conversion Price (as hereinafter defined) in effect from time to time; and (xi) in the case of the Series K Preferred Stock, the product of (x) the number of shares of Series K Preferred Stock that such holder shall then surrender to the Corporation and (y) the number determined by dividing \$7.50 (the “Series K Original Issue Price”) by the Series K Conversion Price (as hereinafter defined) in effect from time to time. The resulting conversion rate applicable from time to time to a particular series shall be referred to hereinafter as the “Conversion Rate.”

As of the Effective Date, the Series A Conversion Price shall be \$6.972 per share, the Series B Conversion Price shall be \$9.12 per share, the Series C Conversion Price shall be \$11.256 per share, the Series D Conversion Price shall be \$9.12 per share, the Series E-1 Conversion Price and the Series E-2 Conversion Price shall each be \$10.62 per share, the Series F Conversion Price shall be \$10.62 per share, the Series G Conversion Price shall be the number equal to the Series G Original Issuance Price, the Series H Conversion Price shall be \$11.796 per share, the Series I Conversion Price shall be \$13.164 per share, the Series J Conversion Price shall be \$5.88 per share and the Series K Conversion Price shall be \$7.50 per share.

(b) Automatic Conversion. All outstanding shares of Preferred Stock shall automatically be converted into shares of Common Stock at the then effective Conversion Rates provided therefor in Section 4.2.4(a) hereof upon the occurrence of the first of the following:

(i) The consummation of the Corporation's sale of Common Stock pursuant to a registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933, as amended (the "Securities Act"), in connection with a firm commitment underwritten public offering in the United States by a United States underwriter (a "Public Offering"); provided that (1) the price to the public is not less than \$10.50 per share (such price to be equitably adjusted in the event of any stock dividend, stock split, combination recapitalization or other similar event) and (2) the aggregate gross proceeds thereof are not less than U.S. \$40,000,000; or

(ii) Upon the approval of such conversion by the written consent of the holders of a majority of the then outstanding shares of Series J Preferred Stock and Series K Preferred Stock voting together as a single class on an as if converted to Common Stock basis and the holders of a majority of the then outstanding shares of Preferred Stock, voting separately as a single class on an as if converted to Common Stock basis.

(c) Mechanics of Conversion. No fractional shares of Common Stock shall be issued upon conversion of the Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the fair market value of the Common Stock on such conversion date as reasonably determined in good faith by the Board of Directors. Before any holder of Preferred Stock shall be entitled to convert the same pursuant to Section 4.2.4(a) into full shares of Common Stock, the holder shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for the Preferred Stock, and shall give written notice to the Corporation at such office that the holder elects to convert the same; provided, however, that in the event of an automatic conversion pursuant to Section 4.2.4(b) above, the outstanding shares of Preferred Stock will be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent, provided, further, however, that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such automatic conversion unless either the certificates evidencing such shares of Preferred Stock are delivered to the Corporation or its transfer agent as provided above, or the holder notifies the Corporation or its transfer agent that such certificates have been lost,

stolen, or destroyed and executes an agreement, reasonably satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates. The Corporation shall, as soon as practicable after such delivery, or after such agreement and indemnification, issue and deliver to such holder of Preferred Stock, a certificate or certificates for the number of shares of Common Stock to which the holder shall be entitled as aforesaid and a check payable to the holder in the amount of any cash amounts payable as the result of a conversion into fractional shares of Common Stock, plus any declared and unpaid dividends on the converted Preferred Stock; however, no holder of Preferred Stock shall be entitled to any payment by reason of any accrued but undeclared dividends on such Preferred Stock. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Preferred Stock to be converted in accordance with Section 4.2.4(a) or on the effective date of the approval of the conversion by the holders of the then outstanding shares of Series J Preferred Stock and Series K Preferred Stock and Preferred Stock (in accordance with Section 4.2.4(b)(ii), above), or upon the date of consummation of a Public Offering satisfying the criteria for automatic conversion (in accordance with Section 4.2.4(b)(i)) and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on such date; provided, however, that if the conversion is in connection with a Public Offering, the conversion shall be conditioned upon the closing of the sale of securities pursuant to such offering, in which event the person(s) entitled to receive the Common Stock issuable upon such conversion of the Preferred Stock shall not be deemed to have converted such Preferred Stock until immediately prior to the closing of the sale of such securities.

(d) Adjustments to Conversion Price for Diluting Issues.

(i) (A) If the Corporation shall after the Effective Date issue any Additional Stock (as hereinafter defined) without consideration or for a consideration per share less than the Series J Conversion Price in effect immediately prior to the issuance of such Additional Stock, the Conversion Price of each series of Preferred Stock in effect immediately prior to each such issuance shall forthwith (except as otherwise provided in this Section 4.2.4) be reduced, concurrently with such issuance, to a price determined by multiplying such Conversion Price by a fraction, the numerator of which shall be the number of shares of Common Stock Outstanding immediately prior to such issuance plus the number of shares of Common Stock that the aggregate consideration received by the Corporation for the Additional Stock so issued would purchase at the Series J Conversion Price as in effect immediately prior to such issuance, and the denominator of which shall be the number of shares of Common Stock Outstanding immediately prior to such issuance, plus the number of shares of Additional Stock so issued. For purposes of calculating the number of shares of Common Stock Outstanding immediately prior to the issuance of Additional Stock with respect to the adjustment to be made hereunder, there shall be included only (i) the number of outstanding shares of Common Stock theretofore issued upon the conversion of Preferred Stock and (ii) the number of shares of Common Stock issuable upon the conversion of the Preferred Stock outstanding or issuable upon conversion or exercise of outstanding warrants and other securities and obligations convertible or exchangeable into Preferred Stock (but excluding Preferred Stock issuable upon conversion of any notes or evidence of indebtedness) immediately prior to the issuance of such Additional Stock; and there shall be excluded from such calculation all other shares of Common Stock,

whether then outstanding or issuable upon the exercise of any options or warrants therefor. There shall be no adjustment to the Series C Conversion Price, the Series D Conversion Price and the Series F Conversion Price as a result of the original issuance at any time of Series E-1 Preferred Stock, Series E-2 Preferred Stock, Series H Preferred Stock, Series I Preferred Stock, Series J Preferred Stock or Series K Preferred Stock.

(B) No adjustments of the Conversion Price of any series of Preferred Stock shall be made in an amount less than one cent (\$.01) per share, provided that any adjustment that is not required to be made by reason of this sentence shall be carried forward and taken into account in any subsequent adjustment. Except to the limited extent provided for in subsections (d)(i)(E)(3) and (d)(i)(E)(4) of this Section 4.2.4, no adjustment of the Conversion Price of any series of Preferred Stock shall have the effect of increasing such Conversion Price above the respective Conversion Price in effect immediately prior to such adjustment.

(C) In the case of the issuance of Additional Stock for cash, the consideration shall be determined to be the amount of cash paid therefor before deducting any reasonable discounts, commissions, or other expenses allowed, paid, or incurred by the Corporation for any underwriting or otherwise in connection with the issuance and sale thereof.

(D) In the case of the issuance of Additional Stock for a consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the fair value thereof as determined by the Board of Directors in good faith.

(E) In the case of the issuance of options to purchase or rights to subscribe for Common Stock, securities by their terms convertible into or exchangeable for Common Stock, or options to purchase or rights to subscribe for such convertible or exchangeable securities (where the shares of Common Stock issuable upon exercise of such options or rights or upon conversion or exchange of such securities are not excluded from the definition of Additional Stock), the following provisions shall apply:

(1) The aggregate maximum number of shares of Common Stock deliverable upon exercise of such options to purchase or rights to subscribe for Common Stock shall be deemed to have been issued at the time such options or rights were issued and for a consideration equal to the consideration (determined in the manner provided in subsections (d)(i)(C) and (d)(i)(D) of this Section 4.2.4), if any, received by the Corporation upon the issuance of such options or rights plus the minimum purchase price provided in such options or rights for the Common Stock covered thereby;

(2) The aggregate maximum number of shares of Common Stock deliverable upon conversion of or in exchange for, any such convertible or exchangeable securities or upon the exercise of options to purchase or rights to subscribe for such convertible or exchangeable securities and subsequent conversion or exchange thereof shall be deemed to have been issued at the time such securities were issued or such options or rights were issued and for a consideration equal to the consideration, if any, received by the Corporation for any such securities and related options or rights (excluding any cash received on

account of accrued interest or accrued dividends), plus the additional consideration, if any, to be received by the Corporation upon the conversion or exchange of such securities or the exercise of any related options or rights (the consideration in each case to be determined in the manner provided in subsections (d)(i)(C) and (d)(i)(D) of this Section 4.2.4);

(3) In the event of any change in the number of shares of Common Stock deliverable upon exercise of such options or rights or upon conversion of or in exchange for such convertible or exchangeable securities, including, but not limited to, a change resulting from the antidilution provisions thereof, the Conversion Price of each series of Preferred Stock in effect at the time shall forthwith be readjusted to such Conversion Price as would have been obtained had the adjustment that was made upon the issuance of such options, rights, or securities not converted prior to such change or the options or rights related to such securities not converted prior to such change been made upon the basis of such change (but not in excess of the Conversion Price immediately before the original adjustment for such options or rights), but no further adjustment shall be made for the actual issuance of Common Stock upon the exercise of any such options or rights or the conversion or exchange of such securities; and

(4) Upon the expiration of any such options or rights, the termination of any such rights to convert or exchange, or the expiration of any options or rights related to such convertible or exchangeable securities, the Conversion Price of each series of Preferred Stock shall forthwith be readjusted to such Conversion Price as would have been obtained had the adjustment that was made upon the issuance of such options, rights, or securities or options or rights related to such securities been made upon the basis of the issuance of only the number of shares of Common Stock actually issued upon the exercise of such option or rights, upon the conversion or exchange of such securities or upon the exercise of the options or rights related to such securities.

(F) In addition to any other adjustments provided for hereunder, the Series I Conversion Price shall be adjusted upon the issuance by the Corporation, after the Effective Date, of any shares of, or warrants or other securities convertible into or exchangeable for, shares of Series B Preferred Stock (not including up to 100,000 shares of Series B Preferred Stock issued upon exercise of warrants issued and outstanding as of the Effective Date) or Series G Preferred Stock (but not upon the conversion of any such shares) (such shares, warrants and other securities, each a "Series I Special Dilutive Issuance") such that the Series I Conversion Price shall equal the amount obtained by the following calculations: (1) divide \$78,011,386 by the sum of (y) 20,054,341 and (z) the number of shares of Common Stock which would have been issuable upon full exercise and/or conversion of all securities (including shares of Preferred Stock into which such securities are convertible or exercisable) included within such Series I Special Dilutive Issuance, as if such issuance and full exercise and/or conversion had occurred immediately prior to the Effective Date; (2) multiply the result in item (1) by a fraction the numerator of which is the Series I Conversion Price in effect at the time of the Series I Special Dilutive Issuance and the denominator of which is \$3.89; (3) subtract the result in item (2) from the Series I Conversion Price in effect at the time of the Series I Special Dilutive Issuance; (4) multiply the result in item (3) by seventy-five percent; and (5) subtract the result in item (4) from the Series I Conversion Price in effect at the time of the Series I Special Dilutive Issuance. The above formula shall be adjusted equitably to account for stock splits, stock dividends, reclassifications, subdivisions, combinations or other such events. This

adjustment shall be recalculated upon each Series I Special Dilutive Issuance. Notwithstanding anything herein to the contrary, if an adjustment is made under this Section 4.2.4(d)(i)(F) upon the issuance by the Corporation of any warrant or other security convertible into or exchangeable for Preferred Stock of the Corporation, there shall be no subsequent adjustment under this Section 4.2.4(d)(i)(F) upon the exercise, conversion or exchange of such instrument. No adjustment made pursuant to this Section 4.2.4(d)(i)(F) shall adjust the Conversion Price of any series of Preferred Stock other than Series I Preferred Stock and as provided in Section 4.2.4(d)(i)(G) for the Series J Preferred Stock.

(G) In addition to any other adjustments provided for hereunder, the Series J Conversion Price shall be adjusted upon the issuance by the Corporation, after the Effective Date, of any shares of, or warrants or other securities convertible into or exchangeable for, shares of Series B Preferred Stock (not including up to 100,000 shares of Series B Preferred Stock issued upon exercise of warrants issued and outstanding as of the Effective Date), Series D Preferred Stock or Series G Preferred Stock (but not upon the conversion of any such shares) (such shares, warrants and other securities, a “Series J Special Dilutive Issuance”) such that the Series J Conversion Price shall equal the amount obtained by the following calculations: (l) divide \$41,105,131 by the sum of (x) 83,888,023, (y) the number of shares of Common Stock which would have been issuable upon full exercise and/or conversion of all securities (including shares of Preferred Stock into which such securities are convertible or exercisable) included within such Series J Special Dilutive Issuance, as if such issuance and full exercise and/or conversion had occurred immediately following the Effective Date; (z) the difference, if any, between we number of shares of Common Stock issuable upon conversion of Series I Preferred Stock immediately following each adjustment made pursuant to Section 4.2.4(d)(i)(F) (if such Series J Special Dilutive Issuance also constitutes a Series I Special Dilutive Issuance) and the number of shares of Common Stock issuable upon conversion of Series I Preferred Stock immediately prior to any such adjustment; (2) multiply the result in item (l) by a fraction the numerator of which is the Series J Conversion Price in effect at the time of the Series J Special Dilutive Issuance and the denominator of which is \$5.88. The above formula shall be adjusted equitably to account for stock splits, stock dividends, reclassifications, subdivisions, combinations or other such events. This adjustment shall be recalculated upon each Series J Special Dilutive Issuance and upon each adjustment to the Series I Conversion Price required by Section 4.2.4(d)(i)(F). Notwithstanding anything herein to the contrary, if an adjustment is made under this Section 4.2.4(d)(i)(G) upon the issuance by the Corporation of any warrant or other security convertible into or exchangeable for Preferred Stock of the Corporation, there shall be no subsequent adjustment under this Section 4.2.4(d)(i)(G) upon the exercise, conversion or exchange of such instrument. No adjustment made pursuant to this Section 4.2.4(d)(i)(G) shall adjust the Conversion Price of any series of Preferred Stock other than Series J Preferred Stock.

(H) Provided no other adjustment is required to be made to the Series K Conversion Price under this Section 4.2.4 as a result of the issuance of Additional Stock, then upon the issuance by the Corporation, after the Effective Date, of any Additional Stock without consideration or for a consideration per share less than the Series K Conversion Price in effect immediately prior to the issuance of such Additional Stock, the Series K Conversion Price in effect immediately prior to each such issuance shall forthwith (except as otherwise provided in this Section 4.2.4) be reduced, concurrently with such issuance, to a price

---

determined by multiplying the Series K Conversion Price by a fraction, the numerator of which shall be the number of shares of Common Stock Outstanding immediately prior to such issuance plus the number of shares of Common Stock that the aggregate consideration received by the Corporation for the Additional Stock so issued would purchase at the Series K Conversion Price as in effect immediately prior to such issuance, and the denominator of which shall be the number of shares of Common Stock Outstanding immediately prior to such issuance, plus the number of shares of Additional Stock so issued. For purposes of calculating the number of shares of Common Stock Outstanding immediately prior to the issuance of Additional Stock with respect to the adjustment to be made hereunder, there shall be included only (i) the number of outstanding shares of Common Stock theretofore issued upon the conversion of Preferred Stock and (ii) the number of shares of Common Stock issuable upon the conversion of the Preferred Stock outstanding or issuable upon conversion or exercise of outstanding warrants and other securities and obligations convertible or exchangeable into Preferred Stock (but excluding Preferred Stock issuable upon conversion of any notes or evidence of indebtedness) immediately prior to the issuance of such Additional Stock; and there shall be excluded from such calculation all other shares of Common Stock, whether then outstanding or issuable upon the exercise of any options or warrants therefor. No adjustment to the Series K Conversion Price shall be made as a result of any special adjustments required by Section 4.2.4(d)(i) (F) or (G) above.

(ii) "Additional Stock" shall mean any shares of Common Stock issued (or deemed to have been issued pursuant subsection (d)(i)(E) of this Section 4.2.4) by the Corporation after the date of effectiveness of this Amended and Restated Certificate of Incorporation (the "Effective Date") other than:

(A) Common Stock issued pursuant to a transaction described in subparagraph (d)(iii) of this Section 4.2.4;

(B) Common Stock (or options or warrants therefor) issued or issuable to officers, employees, or directors of, or consultants to, the Corporation pursuant to an equity incentive plan or other arrangement approved by the Board of Directors; provided, however, that the number of shares of Common Stock so issued or issuable shall not exceed 3,237,461 shares;

(C) Common Stock issued or issuable upon conversion of any shares of any series of Preferred Stock;

(D) Up to 340,000 shares of Series A Preferred Stock, up to 100,000 shares of Series B Preferred Stock and up to 3,333 shares of Common Stock issuable upon exercise of warrants outstanding as of the Effective Date;

(E) Up to 1,250,000 shares of Series B Preferred Stock and up to 400,000 shares of Series D Preferred Stock issuable upon conversion of any convertible promissory notes outstanding as of the Effective Date;

(F) Series G Preferred Stock issuable upon conversion of the Convertible Note;

(G) Shares of Common Stock or Preferred Stock issued after the Effective Date, or that becomes issuable pursuant to the exercise of warrants therefor granted after the Effective Date, in connection with any equipment lease, vendor or customer relationship or similar non equity financing transaction approved by the Board of Directors in accordance with reasonable and customary business practices; provided, however, for purposes of making adjustments to the Conversion Prices of Series E-1 Preferred Stock, Series E-2 Preferred Stock, Series I Preferred Stock, and Series J Preferred Stock and Series K Preferred Stock, the aggregate number of shares of Common Stock so issued or that are issuable upon the exercise of any such warrants or the conversion of any such Preferred Stock or the exercise of any such warrants to purchase Preferred Stock and the conversion of such Preferred Stock in all such financing transactions shall not exceed at the time of such issuance, and after giving effect thereto and the exercise of any such warrants, one percent (1%) of the “Fully Diluted Common Stock”;

(H) Series K Preferred Stock; or

(I) Shares of Common Stock issued as consideration in bona fide, arm's length transactions approved by the Board of Directors involving acquisitions of other persons or assets, strategic licensing transactions and the like.

For purposes hereof, the term “Fully Diluted Common Stock” means at any time the sum of (x) all shares of Common Stock outstanding at such time, whether or not vested, (y) all shares of Common Stock issuable upon the exercise of any option or warrant therefor, without regard to vesting, and (z) all shares of Common Stock issuable upon the exercise of any conversion or exchange right or right to purchase contained in any obligation or security (other than Common Stock) convertible into or exchangeable for shares of Common Stock, including, without limitation, upon the conversion of shares of any series of Preferred Stock.

(iii) Adjustments for Subdivisions or Combinations of Common Stock. In the event the outstanding shares of Common Stock shall be subdivided (by stock split or otherwise than a payment of a dividend in Common Stock), into a greater number of shares of Common Stock, the Conversion Price of each series of Preferred Stock in effect immediately prior to such subdivision shall, concurrently with the effectiveness of such subdivision, be proportionately decreased. In the event the outstanding shares of Common Stock shall be combined (by reclassification or otherwise) into a lesser number of shares of Common Stock, the Conversion Price of each series of Preferred Stock in effect immediately prior to such combination shall, concurrently with the effectiveness of such combination, be proportionately increased.

(iv) Adjustments for Stock Dividends. In the event that the Corporation shall at any time or from time to time after the Effective Date declare or pay, without consideration, any dividend on the Common Stock payable in Common Stock or in any right to acquire Common Stock for no consideration, then such event shall be considered to be a subdivision and the Conversion Price for each series of Preferred Stock in effect immediately prior to such event shall, concurrently with the effectiveness of such event, be proportionately decreased, as appropriate. In the event that the Corporation shall declare or pay, without

consideration, any dividend on the Common Stock payable in any right to acquire Common Stock for no consideration then the Corporation shall be deemed to have made a dividend payable in Common Stock in an amount equal to the maximum number of shares issuable upon exercise of such rights to acquire Common Stock.

(v) Adjustments for Other Distributions. In the event the Corporation at any time or from time to time makes or fixes a record date for the determination of holders of Common Stock entitled to receive any distribution payable in securities of the Corporation other than shares of Common Stock or property, other than cash and other than as otherwise adjusted in this Section 4.2.4, then and in each such event the holders of each series of Preferred Stock shall receive, concurrent with such distribution, the amount of securities of the Corporation that they would have received had their Preferred Stock been converted into Common Stock on the date of such event.

(vi) Adjustments for Reclassification Exchange and Substitution. If the Common Stock issuable upon conversion of the Preferred Stock shall be changed into the same or a different number of shares of any other class or classes of capital stock, whether by capital reorganization, reclassification, or otherwise (other than a subdivision or combination of shares provided for above), the Conversion Price of each series of Preferred Stock then in effect shall, concurrently with the effectiveness of such reorganization or reclassification, be proportionately adjusted such that such Preferred Stock shall be convertible into, in lieu of the number of shares of Common Stock that the holders would otherwise have been entitled to receive, a number of shares of such other class or classes of capital stock equivalent to the number of shares of Common Stock that would have been subject to receipt by the holders upon conversion of any series of Preferred Stock, as the case maybe, immediately before such change.

(e) No Impairment. The Corporation will not, by amendment of its Certificate of Incorporation or through any reorganization, transfer of assets, merger, dissolution, issue, or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation but will at all times in good faith assist in the carrying out of all the provisions of this Section 4.2.4 and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of the Preferred Stock against impairment.

(f) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of any Conversion Price pursuant to this Section 4.2.4, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms thereof and furnish to each holder of each series of Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of any series of Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments; (ii) the respective Conversion Price at the time in effect; and (iii) the number of shares of Common Stock and the amount, if any, of other property that at the time would be received upon the conversion of the respective series of Preferred Stock.

(g) Notices of Record Date. In the event that this Corporation shall propose at any time:

(i) to declare any dividend or distribution upon its Common Stock, whether in cash, property, capital stock, or other securities, whether or not a regular cash dividend and whether or not out of earnings or earned surplus;

(ii) to offer for subscription pro rata to the holders of any class or series of its capital stock any additional shares of capital stock of any class or series or other rights;

(iii) to effect any reclassification or recapitalization of its Common Stock outstanding involving a change in the Common Stock; or

(iv) to merge with or into any other corporation, or sell, lease, or convey all or substantially all its property or business, or to liquidate, dissolve, or wind up;

then, in connection with each such event, the Corporation shall send to the holders of the Preferred Stock at least twenty (20) days prior written notice of the date on which a record shall be taken for such dividend, distribution, or subscription rights (and specifying the date on which the holders of Common Stock shall be entitled thereto) or for determining rights to vote in respect of the matters referred to in (iii) and (iv) above. Each such written notice shall be given by overnight courier, postage prepaid, addressed to the holders of the Preferred Stock at the address for each such holder as shown on the books of the Corporation.

(h) Reservation of Stock Issuable upon Conversion. The Corporation shall at all times reserve and keep available, out of its authorized but unissued shares of Common Stock solely for the purpose of effecting the conversion of the shares of the Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all then outstanding shares of the Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of each series of Preferred Stock, as applicable, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

#### 4.2.5. Series E, I, J and K Redemption.

(a) Holders' Election. Holders of the issued and outstanding Series E Preferred Stock, Series I Preferred Stock, Series J Preferred Stock and Series K Preferred Stock (the "Redeemable Preferred Stock") may at any time on or after June 30, 2008 require the Corporation to redeem all or any portion of such Holders' Redeemable Preferred Stock at the redemption price specified in Section 4.2.5(b); provided, however, that no holder of Redeemable Preferred Stock may so require such redemption unless and until (i) the holders of not less than a majority of Redeemable Preferred Stock then issued and outstanding voting together as a single class on an as if converted to Common Stock basis make such election and (ii) the holders of a majority of the Series J Preferred Stock and Series K Preferred Stock then issued and outstanding voting together on an as converted to Common Stock basis make such

election (together, the “Majority Election”) prior to September 30, 2008. The foregoing election shall be made by such holders of Redeemable Preferred Stock by delivering to the Corporation written notice of election to redeem, setting forth the number of shares of Redeemable Preferred to be redeemed. The date for such redemption (the “Redemption Date”) shall be thirty (30) days after the Majority Election occurs, but not before June 30, 2008. At least fifteen (15) but no more than thirty (30) days prior to the Redemption Date, the Corporation shall provide written notice to each holder of record (at the close of business on the day preceding the next day on which notice is given) of Redeemable Preferred Stock, at the address last shown on the records of the Corporation for such holder, notifying such holder of the redemption to be effected, specifying the number of shares redeemable by such holder, the Redemption Date, the redemption price for each share of Redeemable Preferred Stock, the place at which payment may be obtained and calling upon such holder to surrender to the Corporation, in the manner and at the place designated, his certificate or certificates representing the shares to be redeemed should such holder elect to redeem all or some of his Redeemable Preferred Stock (the “Redemption Notice”).

(b) Redemption Price. The redemption price for each share of Redeemable Preferred Stock redeemed pursuant to this Section 4.2.5 shall be the Original Issue Price therefor as set forth in Section 4.2.4 hereof, plus accrued but unpaid dividends thereon up to and including the date upon which payment shall be made to the holder of the Redeemable Preferred Stock with respect to such redemption. One half of such aggregate redemption price for all Redeemable Preferred Stock shall be payable in cash in immediately available funds on the Redemption Date and the second half of such aggregate redemption price for all Redeemable Preferred Stock shall be payable in immediately available funds, without interest, on the first anniversary of the Redemption Date; however, all Series J Preferred Stock and Series K Preferred Stock that have elected to be redeemed shall be redeemed by the Corporation by payment of the full redemption price thereon prior to the Corporation making any redemption payment on any other Redeemable Preferred Stock. Until the full redemption price has been paid in cash for all shares of Redeemable Preferred Stock being redeemed, (A) no dividend whatsoever shall be paid or declared, and no distribution shall be made, on any share of the Corporation’s capital stock, (B) no shares of capital stock of the Corporation (other than Redeemable Preferred Stock in accordance with this Section 4.2.5) shall be purchased, redeemed or acquired by the Corporation and no monies shall be paid into or set aside or made available for a sinking or other analogous fund for the purchase, redemption or acquisition thereof, provided that the Corporation may, to the extent that it may lawfully do so, redeem at their original cost shares of its outstanding equity securities held by departing employees of the Corporation pursuant to the terms of any stock option or purchase plan or arrangement approved by the Board of Directors (other than those of departing executive officers of the Corporation) notwithstanding that all shares of Redeemable Preferred Stock requested to be redeemed hereunder shall not therefor have been redeemed, and (C) the Corporation will not permit any subsidiary or other affiliate to redeem, purchase or otherwise acquire for value, or set apart for any sinking or other analogous fund for the purchase, redemption or acquisition of any shares of the Corporation’s capital stock (other than Series J Preferred Stock and Series K Preferred Stock in accordance with this Section 4.2.5).

(c) Redemption Prohibited. If, at a redemption payment date, the Corporation is prohibited under applicable law from redeeming all shares of Redeemable

Preferred Stock requested to be redeemed hereunder, then the Corporation shall redeem shares of Series J Preferred Stock and Series K Preferred Stock on a pro rata basis among the holders of Series J Preferred Stock and Series K Preferred Stock in proportion to the amount of their respective redemption prices, and shall redeem the remaining shares of Series J Preferred Stock and Series K Preferred Stock that it would have been required to redeem on such payment date but for the legal prohibition as soon as the Corporation is not legally prohibited from redeeming all or some of such shares. Any shares of Redeemable Preferred Stock not redeemed shall remain outstanding and entitled to all of the rights and preferences provided in this Article 4. After all Series J Preferred Stock and Series K Preferred Stock requested to be redeemed has been redeemed by payment in full, then the Corporation shall redeem remaining Redeemable Stock requested to be redeemed; however, if at a redemption payment date the Corporation is prohibited under applicable law from redeeming all such remaining Redeemable Preferred Stock requested to be redeemed hereunder, then the Corporation shall redeem such remaining Redeemable Preferred Stock on a pro rata basis among the holders thereof in proportion to the full respective redemption amounts to which the holders thereof are entitled hereunder to the extent the Corporation is not so legally prohibited from doing so and shall redeem the remaining shares of Redeemable Preferred Stock requested to be redeemed as soon as the Corporation is not legally prohibited from redeeming all or some of such shares. In the event that the Corporation fails to redeem shares for which redemption is required pursuant to this Section 4.2.5 by reason of a legal prohibition or otherwise, then during the period from the applicable Redemption Date through the date on which such shares are redeemed, the applicable redemption price of such shares shall bear interest at the rate of ten percent (10%) per annum, which interest rate shall increase by an additional one half percent (0.5%) per annum at the end of each six (6) month period thereafter until the redemption price (as so increased) is paid in full, subject to a maximum interest rate of fifteen percent (15%) per annum and with such interest to be compounded annually. Without limitation of the foregoing, the Corporation shall take such action as shall be necessary or appropriate to remove promptly any impediments to its ability to redeem the Redeemable Preferred Stock under the circumstances contemplated by this Section 4.2.5. Any successor to the Corporation shall agree, as a condition to such succession, to carry out and observe the obligations of the Corporation hereunder with respect to the Redeemable Preferred Stock.

(d) Surrender of Certificates. Upon receipt of the applicable redemption price therefor, each holder of shares of Redeemable Preferred Stock so redeemed shall surrender the certificate or certificates representing such shares so redeemed to the Corporation, duly assigned or endorsed for transfer (or accompanied by duly executed stock powers relating thereto), or shall deliver an affidavit or agreement reasonably satisfactory to the Corporation to indemnify the Corporation (without the need to post any bond or other security for such obligation) from any loss incurred by it in connection therewith with respect to such certificates at the principal executive office of the Corporation or the office of the transfer agent for the Redeemable Preferred Stock or such office or offices in the continental United States of an agent for redemption as may from time to time be designated by notice to the holders of Redeemable Preferred Stock, and each surrendered certificate shall be canceled and retired.

#### **4.2.6. Voting Rights: Directors .**

(a) General. Each holder of outstanding shares of Series A Preferred Stock, Series B Preferred Stock,

Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, Series G Preferred Stock, Series H Preferred Stock, Series I Preferred Stock, Series J Preferred Stock and Series K Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which the shares of Preferred Stock so held could be converted at the record date for determination of the stockholders entitled to vote, or, if no such record date is established, at the date such vote is taken or any written consent of stockholders is solicited. The holders of Series F Preferred Stock shall have no voting rights except as required by the DGCL. Except as required by law or as otherwise set forth herein, all shares of Preferred Stock and all shares of Common Stock shall vote together as a single class on all matters to come before the stockholders of the Corporation. Fractional votes by the holders of Preferred Stock shall not, however, be permitted, and any fractional voting rights shall (after aggregating all shares into which shares of Preferred Stock held by each holder could be converted) be disregarded.

(b) Election of Directors. The Board of Directors shall consist of seven (7) directors elected as follows: (i) two directors shall be elected by the holders of the Series A Preferred Stock, Series E Preferred Stock and Series H Preferred Stock, voting together as a single class; (ii) one director shall be elected by the holders of the Series I Preferred Stock; (iii) two directors shall be elected by the holders of the Series J Preferred Stock; (iv) one director shall be elected by the holders of Common Stock; and (v) one director shall be elected by the holders of the Common Stock and the Preferred Stock, voting together as a single class. Any vacancy in the Board of Directors occurring because of the death, resignation or removal of a director shall be filled by the vote or written consent of the holders of the class(es) or series entitled to fill such seat as provided in this Section 4.2.74.2.6(b). Any amendment to this Section 4.2.74.2.6(b) shall require the affirmative vote of (i) a majority of the outstanding Preferred Stock and Common Stock voting together as a single class and (ii) a majority of the outstanding Series J Preferred Stock. Any amendment to this Section 4.2.74.2.6(b) that would eliminate the right of the Series I Preferred Stock to elect one director requires the affirmative vote of the holders of a majority of the outstanding Series I Preferred Stock.

#### **(c) Protective Provisions .**

(i) The Corporation shall not, without first obtaining the approval of the holders of at least a majority of the then issued and outstanding shares of Series J Preferred Stock, take any action which (i) changes any of the rights, preferences or privileges of, or adversely affects the rights of, the Series J Preferred Stock including, without limitation, liquidation, redemption, dividend, voting or conversion rights; or (ii) authorizes, creates, reclassifies or issues shares of any class or series of equity securities, including any securities or obligations convertible into or exercisable for such equity securities, ranking senior to or in parity with the Series J Preferred Stock, including without limitation, with respect to any rights, preferences or privileges, including without limitation relating to dividends, liquidation preference, voting and redemption; or (iii) amends or modifies the rights of the holders of any other series of Preferred Stock to confer on the holders of the shares of any such series of Preferred Stock rights, preferences or privileges that are senior to, in parity with or held by the holders of the Series J Preferred Stock, including without limitation, relating to dividends, liquidation preference, voting and redemption.

(ii) The Corporation shall not, without first obtaining the approval of the holders of at least a majority of the then issued and outstanding shares of Series J Preferred Stock and Series K Preferred Stock, voting together as a single class on an as if converted to Common Stock basis, take any action which (i) changes any of the rights, preferences or privileges of, or adversely affects the rights of, the Series K Preferred Stock including, without limitation, liquidation, redemption, dividend, voting or conversion rights; or (ii) authorizes, creates, reclassifies or issues shares of any class or series of equity securities, including any securities or obligations convertible into or exercisable for such equity securities, ranking senior to or in parity with the Series K Preferred Stock, including without limitation, with respect to any rights, preferences or privileges, including without limitation, relating to dividends, liquidation preference, voting and redemption; or (iii) amends or modifies the rights of the holders of any other series of Preferred Stock to confer on the holders of the shares of any such series of Preferred Stock rights, preferences or privileges that are senior to, in parity with or held by the holders of the Series K Preferred Stock, including without limitation, relating to dividends, liquidation preference, voting and redemption.

(iii) The Corporation shall not, without first obtaining the approval of the holders of not less than a majority of the total number of shares of any remaining series of Preferred Stock (other than Series F Preferred Stock) then outstanding, amend the Corporation's Certificate of Incorporation to alter or change any rights, preferences, or privileges of such series of Preferred Stock so as to materially and adversely affect such series of Preferred Stock.

(iv) In addition to the approvals required by clauses (i),(ii) and (iii) of this Section 4.2.6(c), the Corporation shall not, without first obtaining the approval of the holders of at least 51% of the issued and outstanding shares of Preferred Stock, voting together as a single class, or the approval of its Board of Directors, including at least four of the five directors elected solely by the holders of one or more series of Preferred Stock, if the Board of Directors is authorized Under the DGCL to take such action without any stockholder vote, approval or consent, authorize or take any of the following actions:

(A) merge, consolidate, reorganize or enter into a share exchange with any other person or engage in any other transaction in which any person or group of persons shall, immediately after giving effect thereto, become or obtain the right to become the beneficial owner, directly or indirectly, of capital securities of the corporation representing fifty percent (50%) or more of the aggregate voting power represented by all of the Corporation's issued and outstanding capital securities;

(B) make any other distributions upon, or redeem, repurchase or otherwise acquire for value, any of the Corporation's outstanding equity securities other than (I) conversions of Preferred Stock; (II) purchases at cost from departing employees pursuant to the terms of any stock option or purchase plan or arrangement approved by the Board of Directors (other than those of departing executive officers of the Corporation); (III) redemptions as provided in Section 4.2.5; (IV) distributions upon a Liquidation as provided in Section 4.2.3; and (V) the declaration or payment of dividends (other than cumulative dividends) as contemplated in this Certificate of Incorporation;

- (C) provide for the voluntary liquidation, dissolution, winding up, recapitalization or reorganization of the Company;
- (D) amend or waive any provision of the Corporation's Certificate of Incorporation or Bylaws;
- (E) sell, license, convey or otherwise dispose of or encumber all or substantially all the assets of the Corporation;
- (F) materially change the business plan of the Corporation as approved by the Corporation's Board of Directors;
- (G) change in any material way the nature of the business of the Corporation or the manner in which that business is conducted;
- (H) change in any material way the compensation of senior management;
- (I) increase expenditures in any year by \$1 million or more in the aggregate above the aggregate amount of expenditure set forth in the Corporation's annual budget for that year, which budget was approved by the Corporation's Board of Directors prior to the beginning of that year;
- (J) incur indebtedness for borrowed money in an aggregate amount greater than \$500,000; or
- (K) amend in any material manner any existing or approves any new joint venture, material license or similar arrangement.

4.2.7. Preemptive Rights. The holders of Preferred Stock shall have preemptive rights as set forth in the Amended and Restated Stockholders' Agreement dated as of May 8, 2003, among the Corporation and the "Holders" identified therein.

4.3. Common Stock.

4.3.1. Dividends. Subject to the rights and preferences applicable to the Preferred Stock outstanding at any time as herein set forth, the holders of shares of Common Stock shall be entitled to receive such dividends, payable in cash or otherwise, as may be declared thereon by the Board of Directors from time to time out of assets of funds of the Corporation legally available therefor; provided, that no dividends shall be declared or paid on any shares of Common Stock until all dividends accrued or declared but unpaid on the Preferred Stock shall have been paid in full; and, provided further, that when and as dividends are declared and paid on shares of Common Stock, the Corporation shall declare and pay at the same time, as provided in Section 4.2.2(b), to each holder of Series F Preferred Stock, Series I Preferred Stock, Series J Preferred Stock and Series K Preferred Stock a dividend equal to the dividend which would have been payable to such holder if the shares of such series of Preferred Stock held by such holder had been converted into Common Stock on the record date for the determination of holders of Common Stock entitled to receive such dividend.

4.3.2. Voting. Each holder of Common Stock shall have one vote for each share of Common Stock so held and shall be entitled to vote on all matters submitted to a vote of the stockholders of the Corporation, including, subject to Section 4.2.6(b), the election of directors.

4.3.3. Liquidation. Subject to the rights and preferences applicable to the Preferred Stock outstanding at any time as hereinafter set forth, upon a Liquidation, the holders of shares of Common Stock will be entitled to receive all assets of the Corporation available for distribution to its stockholders.

## **ARTICLE 5**

5.1. Notices. All notices to any party required or permitted to be sent pursuant to this Certificate ("Notices") shall be contained in a written instrument addressed to such party at such party's address as it appears on the books of the Corporation or such other address as may hereafter be designated in writing by the addressee to the addressor listing all parties and shall be deemed given (a) when delivered in person; (b) on the next business day after receipt confirming good transmission when sent by facsimile transmission; (c) the earlier of (i) the day of delivery or (ii) four (4) business days after being duly sent by first class United States mail, postage prepaid and return receipt requested, or (d) the earlier of (i) the day of delivery or (ii) two (2) business days after being duly sent by United States overnight express mail or recognized express courier service.

## **ARTICLE 6**

6.1. Indemnification. The Corporation shall indemnify and hold harmless each person who at any time is, or shall have been, a director or officer of the Corporation and was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he or she is or was a director or officer of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement incurred in connection with any such action, suit or proceeding, to the maximum extent permitted by the General Corporation Law of the State of Delaware, as the same exists or may hereafter be amended. In furtherance of and not in limitation of the foregoing, the Corporation shall advance expenses, including attorneys' fees, incurred by a director or officer of the Corporation in defending any civil, criminal, administrative or investigative action, suit or proceeding in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such advances if it shall ultimately be determined that he is not entitled to be indemnified by the Corporation. The foregoing right of indemnification shall in no way be exclusive of any other rights of indemnification to which any such director or officer may be entitled, under any bylaw, agreement, vote of directors or stockholders or otherwise.

6.2. Limitation on Liability. A Director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a Director, except for liability (i) for any breach of the Director's duty of loyalty to the

Corporation or its stockholders; (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; (iii) under Section 174 of the DGCL; or (iv) for any transaction from which the Director derived an improper personal benefit. If the DGCL is amended after the Effective Date to authorize corporate action further eliminating or limiting the personal liability of Directors, then the liability of a Director of the Corporation shall be eliminated or limited to the fullest extent permitted by the DGCL, as so amended.

6.3. Modification. Any repeal or modification of this Article 6 by either (i) the stockholders of the Corporation or (ii) an amendment to the DGCL, shall not adversely affect any right or protection existing at the time of such repeal or modification with respect to any acts or omissions occurring before such repeal or modification of a person serving as a Director at the time of such repeal or modification.

## **ARTICLE 7**

7.1. Existence. The Corporation is to have perpetual existence.

## **ARTICLE 8**

8.1. Bylaws. Except as otherwise provided by law or this Certificate of Incorporation, the Bylaws of the Corporation may be amended or repealed by the Board of Directors.

**AMENDED BY LAWS  
OF  
ACORDA THERAPEUTICS, INC.  
a Delaware Corporation**

---

## **TABLE OF CONTENTS**

ARTICLE I	CORPORATE OFFICES
1.1.	REGISTERED OFFICE
1.2.	OTHER OFFICES
ARTICLE II	MEETINGS OF STOCKHOLDERS
2.1.	PLACE OF MEETINGS
2.2.	ANNUAL MEETING
2.3.	SPECIAL MEETING
2.4.	NOTICE OF STOCKHOLDERS' MEETINGS
2.5.	ADVANCE NOTICE OF STOCKHOLDER NOMINEES AND STOCKHOLDER BUSINESS
2.6.	MANNER OF GIVING NOTICE; AFFIDAVIT OF NOTICE
2.7.	QUORUM
2.8.	ADJOURNED MEETING: NOTICE
2.9.	VOTING
2.10.	WAIVER OF NOTICE
2.11.	STOCKHOLDER ACTION BY WRITTEN CONSENT WITHOUT A MEETING
2.12.	RECORD DATE FOR STOCKHOLDER NOTICE; VOTING; GIVING CONSENTS
2.13.	PROXIES
2.14.	LIST OF STOCKHOLDERS ENTITLED TO VOTE
2.15.	CONDUCT OF BUSINESS
ARTICLE III	DIRECTORS
3.1.	POWERS
3.2.	NUMBER
3.3.	ELECTION, QUALIFICATION TERM OF OFFICE OF DIRECTORS
3.4.	RESIGNATION AND VACANCIES
3.5.	PLACE OF MEETING; MEETINGS BY TELEPHONE
3.6.	FIRST MEETINGS
3.7.	REGULAR MEETINGS
3.8.	SPECIAL MEETINGS; NOTICE
3.9.	QUORUM
3.10.	WAIVER OF NOTICE
3.11.	ADJOURNED MEETING; NOTICE
3.12.	CONDUCT OF BUSINESS
3.13.	BOARD ACTION BY WRITTEN CONSENT WITHOUT A MEETING
3.14.	FEES AND COMPENSATION OF DIRECTORS
3.15.	APPROVAL OF LOANS TO OFFICERS

3.16. REMOVAL OF DIRECTORS

ARTICLE IV COMMITTEES

- 4.1. COMMITTEES OF DIRECTORS
- 4.2. COMMITTEE MINUTES
- 4.3. MEETINGS AND ACTION OF COMMITTEES

ARTICLE V OFFICERS

- 5.1. OFFICERS
- 5.2. ELECTION OF OFFICERS
- 5.3. REMOVAL AND RESIGNATION OF OFFICERS
- 5.4. CHAIRMAN OF THE BOARD
- 5.5. CHIEF EXECUTIVE OFFICER
- 5.6. PRESIDENT
- 5.7. VICE PRESIDENT
- 5.8. SECRETARY
- 5.9. CHIEF FINANCIAL OFFICER
- 5.10. ASSISTANT SECRETARY
- 5.11. AUTHORITY AND DUTIES OF OFFICERS

ARTICLE VI INDEMNITY

- 6.1. INDEMNIFICATION OF DIRECTORS AND OFFICERS
- 6.2. INDEMNIFICATION OF OTHERS
- 6.3. INSURANCE

ARTICLE VII RECORDS AND REPORTS

- 7.1. MAINTENANCE AND INSPECTION OF RECORDS
- 7.2. INSPECTION BY DIRECTORS
- 7.3. REPRESENTATION OF SHARES OF OTHER CORPORATIONS

ARTICLE VIII GENERAL MATTERS

- 8.1. CHECKS
- 8.2. EXECUTION OF CORPORATE CONTRACTS AND INSTRUMENTS
- 8.3. STOCK CERTIFICATES; PARTLY PAID-SHARES
- 8.4. SPECIAL DESIGNATION ON CERTIFICATES
- 8.5. LOST CERTIFICATES
- 8.6. CONSTRUCTION: DEFINITIONS
- 8.7. DIVIDENDS
- 8.8. FISCAL YEAR
- 8.9. SEAL
- 8.10. TRANSFER OF STOCK

8.11. STOCK TRANSFER AGREEMENTS  
8.12. REGISTERED STOCKHOLDERS

ARTICLE IX AMENDMENTS

ARTICLE X DISSOLUTION

ARTICLE XI CUSTODIAN

11.1. APPOINTMENT OF A CUSTODIAN IN CERTAIN CASES  
11.2. DUTIES OF CUSTODIAN

ARTICLE XII LOANS TO OFFICERS

**AMENDED BY LAWS**

**OF**

**ACORDA THERAPEUTICS, INC.**

**ARTICLE I**

**CORPORATE OFFICES**

**1.1. REGISTERED OFFICE**

The registered office of the Corporation shall be in the City of Wilmington, County of New Castle, State of Delaware. The name of the registered agent of the Corporation at such location is The Corporation Trust Company.

**1.2. OTHER OFFICES**

The board of directors may at any time establish other offices at any place or places where the Corporation is qualified to do business.

**ARTICLE II**

**MEETINGS OF STOCKHOLDERS**

**2.1. PLACE OF MEETINGS**

Meetings of stockholders shall be held at any place, within or outside the State of Delaware, designated by the board of directors. In the absence of any such designation, stockholders' meetings shall be held at the registered office of the Corporation.

**2.2. ANNUAL MEETING**

The annual meeting of stockholders shall be held each year on a date and at a time designated by the board of directors. At the meeting, directors shall be elected and any other proper business may be transacted.

**2.3. SPECIAL MEETING**

A special meeting of the stockholders may be called at any time by the (i) board of directors, (ii) the chairman of the board, (iii) the president, (iv) the chief executive officer or (v) one or more stockholders holding shares in the aggregate entitled to cast not less than ten percent (10%) of the votes at that meeting.

---

## **2.4. NOTICE OF STOCKHOLDERS' MEETINGS**

All notices of meetings with stockholders shall be in writing and shall be sent or otherwise given in accordance with Section 2.6 of these Bylaws not less than 10 nor more than 60 days before the date of the meeting to each stockholder entitled to vote at such meeting. The notice shall specify the place, date and hour of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called.

## **2.5. ADVANCE NOTICE OF STOCKHOLDER NOMINEES AND STOCKHOLDER BUSINESS**

To be properly brought before an annual meeting or special meeting, nominations for the election of director or other business must be (a) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the board of directors, (b) otherwise properly brought before the meeting by or at the direction of the board of directors, or (c) otherwise properly brought before the meeting by a stockholder. For such nominations or other business to be considered properly brought before the meeting by a stockholder, such stockholder must have given timely notice and in proper form of his intent to bring such business before such meeting. To be timely, such stockholder's notice must be delivered to or mailed and received by the secretary of the Corporation not less than 90 days prior to the meeting; provided, however, that in the event that less than 100 days notice or prior public disclosure of the date of the meeting is given or made to stockholders, notice by the stockholder to be timely must be so received not later than the close of business on the tenth day following the day on which such notice of the date of the meeting was mailed or such public disclosure was made. To be in proper form, a stockholder's notice to the secretary shall set forth:

- (i) the name and address of the stockholder who intends to make the nominations, propose the business, and, as the case may be, the name and address of the person or persons to be nominated or the nature of the business to be proposed;
- (ii) a representation that the stockholder is a holder of record of stock of the Corporation entitled to vote at such meeting and, if applicable, intends to appear in person or by proxy at the meeting to nominate the person or persons specified in the notice or introduce the business specified in the notice;
- (iii) if applicable, a description of all arrangements or understandings between the stockholder and each nominee and any other person or persons (naming such person or persons) pursuant to which the nomination or nominations are to be made by the stockholder;
- (iv) such other information regarding each nominee or each matter of business to be proposed by such stockholder as would be required to be included in a proxy statement filed pursuant to the proxy rules of the Securities and Exchange Commission had the nominee been nominated, or intended to be nominated, or the matter been proposed, or intended to be proposed by the board of directors; and

(v) if applicable, the consent of each nominee to serve as director of the Corporation if so elected.

The chairman of the meeting may refuse to acknowledge the nomination of any person or the proposal of any business not made in compliance with the foregoing procedure.

**2.6. MANNER OF GIVING NOTICE; AFFIDAVIT OF NOTICE**

Written notice of any meeting of stockholders, if mailed, is given when deposited in the United States mail, postage prepaid, directed to the stockholder at his address as it appears on the records of the Corporation. An affidavit of the secretary or an assistant secretary or of the transfer agent of the Corporation that the notice has been given shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

**2.7. QUORUM**

The holders of a majority of the stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders for the transaction of business except as otherwise provided by statute or by the certificate of incorporation. If, however, such quorum is not present or represented at any meeting of the stockholders, then either (i) the chairman of the meeting, or (ii) the stockholders entitled to vote thereat, present in person or represented by proxy, shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present or represented. At such adjourned meeting at which a quorum is present or represented, any business may be transacted that might have been transacted at the meeting as originally noticed.

When a quorum is present or represented at any meeting, the vote of the holders of a majority of the stock having voting power present in person or represented by proxy shall decide any question brought before such meeting, unless the question is one upon which, by express provisions of the statutes or of the certificate of incorporation, a different vote is required, in which case such express provision shall govern and control the decision of the question.

**2.8. ADJOURNED MEETING; NOTICE**

When a meeting is adjourned to another time or place, unless these Bylaws otherwise require, notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting the Corporation may transact any business that might have been transacted at the original meeting. If the adjournment is for more than 30 days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

**2.9. VOTING**

The stockholders entitled to vote at any meeting of stockholders shall be determined in accordance with the provisions of Sections 2.12 and 2.14 of these Bylaws, subject to the provisions of Sections 217 and 218 of the General Corporation Law of Delaware (relating to

voting rights of fiduciaries, pledgers and joint owners of stock and to voting trusts and other voting agreements).

Except as may be otherwise provided in the certificate of incorporation, each stockholder shall be entitled to one vote for each share of capital stock held by such stockholder.

2.10. **WAIVER OF NOTICE**

Whenever notice is required to be given under any provision of the General Corporation Law of Delaware or of the certificate of incorporation or these Bylaws, a written waiver thereof, signed by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders need be specified in any written waiver of notice unless so required by the certificate of incorporation or these Bylaws.

2.11. **STOCKHOLDER ACTION BY WRITTEN CONSENT WITHOUT A MEETING**

Unless otherwise provided in the certificate of incorporation, any action required by this chapter to be taken at any annual or special meeting of stockholders of a Corporation, or any action that may be taken at any annual or special meeting of such stockholders, may be taken without a meeting, without prior notice, and without a vote if a consent in writing, setting forth the action so taken, is signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted.

Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing. If the action which is consented to is such as would have required the filing of a certificate under any section of the General Corporation Law of Delaware if such action had been voted on by stockholders at a meeting thereof, then the certificate filed under such section shall state, in lieu of any statement required by such section concerning any vote of stockholders, that written notice and written consent have been given as provided in Section 228 of the General Corporation Law of Delaware.

Notwithstanding the foregoing, effective upon the registration of any class of securities of the Corporation pursuant to the requirements of the Securities Exchange Act of 1934, as amended, the stockholders of the Corporation may not take action by written consent without a meeting but must take any such actions at a duly called annual or special meeting.

2.12. **RECORD DATE FOR STOCKHOLDER NOTICE; VOTING; GIVING CONSENTS**

In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or entitled to express consent to

corporate action in writing without a meeting, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the board of directors may fix, in advance, a record date, which shall not be more than 60 nor less than 10 days before the date of such meeting, nor more than 60 days prior to any other action.

If the board of directors does not so fix a record date, the fixing of such record date shall be governed by the provisions of Section 213 of the General Corporation Law of Delaware.

A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the board of directors may fix a new record date for the adjourned meeting.

#### 2.13. PROXIES

Each stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for him by a written proxy, signed by the stockholder and filed with the secretary of the Corporation, but no such proxy shall be voted or acted upon after 3 years from its date, unless the proxy provides for a longer period. A proxy shall be deemed signed if the stockholder's name is placed on the proxy (whether by manual signature, typewriting, telegraphic transmission or otherwise) by the stockholder or the stockholder's attorney-in-fact. The revocability of a proxy that states on its face that it is irrevocable shall be governed by the provisions of Section 212(c) of the General Corporation Law of Delaware.

#### 2.14. LIST OF STOCKHOLDERS ENTITLED TO VOTE

The officer who has charge of the stock ledger of a Corporation shall prepare and make, at least 10 days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least 10 days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held. The stock ledger shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present. The stock ledger shall be the only evidence as to who are the stockholders entitled to examine the stock ledger, the list of stockholders or the books of the Corporation, or to vote in person or by proxy at any meeting of stockholders and of the number of shares held by each such stockholder.

#### 2.15. CONDUCT OF BUSINESS

Meetings of stockholders shall be presided over by the chairman of the board, if any, or in his absence by the president, or in his absence by a vice president, or in the absence of the foregoing persons by a chairman designated by the board of directors, or in the absence of such designation by a chairman chosen at the meeting. The secretary shall act as secretary of the meeting, but in his absence the chairman of the meeting may appoint any person to act as

secretary of the meeting. The chairman of any meeting of stockholders shall determine the order of business and the procedures at the meeting, including such matters as the regulation of the manner of voting and conduct of business.

## ARTICLE III

### DIRECTORS

#### 3.1. POWERS

Subject to the provisions of the General Corporation Law of Delaware and any limitations in the certificate of incorporation or these Bylaws relating to action required to be approved by the stockholders or by the outstanding shares, the business and affairs of the Corporation shall be managed and all corporate powers shall be exercised by or under the direction of the board of directors.

#### 3.2. NUMBER

Unless otherwise provided in the certificate of incorporation, the Board of Directors shall consist of the number thereof to be determined from time to time by resolution of the Board of Directors. No reduction of the authorized number of directors shall have the effect of removing any director before that director's term of office expires.

#### 3.3. ELECTION, QUALIFICATION TERM OF OFFICE OF DIRECTORS

Except as provided in Section 3.4 of these Bylaws, at each annual meeting of stockholders, directors of the Corporation shall be elected to hold office until the expiration of the term for which they are elected, and until their successors have been duly elected and qualified; except that if any such election shall not be so held, such election shall take place at a stockholders' meeting called and held in accordance with the Delaware General Corporation Law.

Directors need not be stockholders unless so required by the certificate of incorporation or these Bylaws, wherein other qualifications for directors may be prescribed.

Elections of directors need not be by written ballot.

#### 3.4. RESIGNATION AND VACANCIES

Any director may resign at any time upon written notice to the Corporation. Subject to Section 3.16 of these Bylaws, Stockholders may remove directors with or without cause. Subject to the following paragraph of this Section 3.4, any vacancy occurring in the board of directors with or without cause may be filled by a majority of the remaining members of the board of directors, although such majority is less than a quorum, or by a plurality of the votes cast at a meeting of stockholders, and each director so elected shall hold office until the expiration of the term of office of the director whom he has replaced.

Unless otherwise provided in the certificate of incorporation or these Bylaws:

- (i) Vacancies and newly created directorships resulting from any increase in the authorized number of directors elected by all of the stockholders having the right to vote as a single class may be filled by a majority of the directors then in office, although less than a quorum, or by a sole remaining director.
- (ii) Whenever the holders of any class or classes of stock or series thereof are entitled to elect one or more directors by the provisions of the certificate of incorporation, vacancies and newly created directorships of such class or classes or series may be filled by a majority of the directors elected by such class or classes or series thereof then in office, or by a sole remaining director so elected.

If at any time, by reason of death or resignation or other cause, the Corporation should have no directors in office, then any officer or any stockholder or an executor, administrator, trustee or guardian of a stockholder, or other fiduciary entrusted with like responsibility for the person or estate of a stockholder, may apply to the Court of Chancery for a decree summarily ordering an election as provided in Section 211 of the General Corporation Law of Delaware.

If, at the time of filling any vacancy or any newly created directorship, the directors then in office constitute less than a majority of the whole board (as constituted immediately prior to any such increase), then the Court of Chancery may, upon application of any stockholder or stockholders holding at least 10% of the total number of the shares at the time outstanding having the right to vote for such directors, summarily order an election to be held to fill any such vacancies or newly created directorships, or to replace the directors chosen by the directors then in office as aforesaid, which election shall be governed by the provisions of Section 211 of the General Corporation Law of Delaware as far as applicable.

### 3.5. PLACE OF MEETING; MEETINGS BY TELEPHONE

The board of directors of the Corporation may hold meetings, both regular and special, either within or outside the State of Delaware.

Unless otherwise restricted by the certificate of incorporation or these Bylaws, members of the board of directors, or any committee designated by the board of directors, may participate in a meeting of the board of directors, or any committee, by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

### 3.6. FIRST MEETINGS

The first meeting of each newly elected board of directors shall be held at such time and place as shall be fixed by the vote of the stockholders at the annual meeting and no notice of such meeting shall be necessary to the newly elected directors in order legally to constitute the meeting, provided a quorum shall be present. In the event of the failure of the stockholders to fix the time or place of such first meeting of the newly elected board of directors, or in the event such meeting is not held at the time and place so fixed by the stockholders, the meeting may be

held at such time and place as shall be specified in a notice given as hereinafter provided for special meetings of the board of directors, or as shall be specified in a written waiver signed by all of the directors.

### 3.7. REGULAR MEETINGS

Regular meetings of the board of directors may be held without notice at such time and at such place as shall from time to time be determined by the board.'

### 3.8. SPECIAL MEETINGS; NOTICE

Special meetings of the board of directors for any purpose or purposes may be called at any time by the chairman of the board, the president, any vice president, the secretary or any two directors.

Notice of the time and place of special meetings shall be delivered personally or by telephone to each director or sent by first-class mail or telegram, charges prepaid, addressed to each director at that director's address as it is shown on the records of the Corporation. If the notice is mailed, it shall be deposited in the United States mail at least 4 days before the time of the holding of the meeting. If the notice is delivered personally or by telephone or by telegram, it shall be delivered personally or by telephone or to the telegraph company at least 48 hours before the time of the holding of the meeting. Any oral notice given personally or by telephone may be communicated either to the director or to a person at the office of the director who the person giving the notice has reason to believe will promptly communicate it to the director. The notice need not specify the purpose or the place of the meeting, if the meeting is to be held at the principal executive office of the Corporation.

### 3.9. QUORUM

At all meetings of the board of directors, a majority of the authorized number of directors shall constitute a quorum for the transaction of business and the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the board of directors, except as may be otherwise specifically provided by statute or by the certificate of incorporation.

### 3.10. WAIVER OF NOTICE

Whenever notice is required to be given under any provision of the General Corporation Law of Delaware or of the certificate of incorporation or these Bylaws, a written waiver thereof, signed by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the directors, or members of a committee of directors, need be specified in any written waiver of notice unless so required by the certificate of incorporation or these Bylaws.

### **3.11. ADJOURNED MEETING; NOTICE**

If a quorum is not present at any meeting of the board of directors, then the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present.

### **3.12. CONDUCT OF BUSINESS**

Meetings of the board of directors shall be presided over by the chairman of the board, if any, or in his absence by the chief executive officer, or in their absence by a chairman chosen at the meeting. The secretary shall act as secretary of the meeting, but in his absence the chairman of the meeting may appoint any person to act as secretary of the meeting. The chairman of any meeting shall determine the order of business and the procedures at the meeting.

### **3.13. BOARD ACTION BY WRITTEN CONSENT WITHOUT A MEETING**

Unless otherwise restricted by the certificate of incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the board of directors, or of any committee thereof, may be taken without a meeting if all members of the board or committee, as the case may be, consent thereto in writing and the writing or writings are filed with the minutes of proceedings of the board or committee.

### **3.14. FEES AND COMPENSATION OF DIRECTORS**

Unless otherwise restricted by the certificate of incorporation or these Bylaws, the board of directors shall have the authority to fix the compensation of directors. The directors may be paid their expenses, if any, of attendance at each meeting of the board of directors and may be paid a fixed sum for attendance at each meeting of the board of directors or a stated salary as director. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor. Members of special or standing committees may be allowed like compensation for attending committee meetings.

### **3.15. APPROVAL OF LOANS TO OFFICERS**

The Corporation may lend money to, or guarantee any obligation of, or otherwise assist any officer or other employee of the Corporation or of its subsidiary, including any officer or employee who is a director of the Corporation or its subsidiary, whenever, in the judgment of the directors, such loan, guaranty or assistance may reasonably be expected to benefit the Corporation. The loan, guaranty or other assistance may be with or without interest and may be unsecured, or secured in such manner as the board of directors shall approve, including, without limitation, a pledge of shares of stock of the Corporation. Nothing in this section contained shall be deemed to deny, limit or restrict the powers of guaranty or warranty of the Corporation at common law or under any statute.

### **3.16. REMOVAL OF DIRECTORS**

Unless otherwise restricted by statute, by the certificate of incorporation or by these Bylaws, any director or the entire board of directors may be removed, with or without cause, by

the holders of a majority of the shares then entitled to vote at an election of directors. If at any time a class or series of shares is entitled to elect one or more directors, the provisions of this Article 3.16 shall apply to the vote of that class or series and not to the vote of the outstanding shares as a whole.

No reduction of the authorized number of directors shall have the effect of removing any director prior to the expiration of such director's term of office.

## ARTICLE IV

### COMMITTEES

#### 4.1. COMMITTEES OF DIRECTORS

The board of directors may, by resolution passed by a majority of the whole board, designate one or more committees, with each committee to consist of one or more of the directors of the Corporation. The board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the board of directors to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the board of directors or in the Bylaws of the Corporation, shall have and may exercise all the powers and authority of the board of directors in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers that may require it; but no such committee shall have the power or authority to (i) amend the certificate of incorporation (except that a committee may, to the extent authorized in the resolution or resolutions providing for the issuance of shares of stock adopted by the board of directors as provided in Section 151(a) of the General Corporation Law of Delaware, fix any of the preferences or rights of such shares relating to dividends, redemption, dissolution, any distribution of assets of the Corporation or the conversion into, or the exchange of such shares for, shares of any other class or classes or any other series of the same or any other class or classes of stock of the Corporation), (ii) adopt an agreement of merger or consolidation under Sections 251 or 252 of the General Corporation Law of Delaware, (iii) recommend to the stockholders the sale, lease or exchange of all or substantially all of the Corporation's property and assets, (iv) recommend to the stockholders a dissolution of the Corporation or a revocation of a dissolution, or (v) amend the Bylaws of the Corporation; and, unless the board resolution establishing the committee, the Bylaws or the certificate of incorporation expressly so provide, no such committee shall have the power or authority to declare a dividend, to authorize the issuance of stock, or to adopt a certificate of ownership and merger pursuant to Section 253 of the General Corporation Law of Delaware.

#### 4.2. COMMITTEE MINUTES

Each committee shall keep regular minutes of its meetings and report the same to the board of directors when required.

#### **4.3. MEETINGS AND ACTION OF COMMITTEES**

Meetings and actions of committees shall be governed by, and held and taken in accordance with, the provisions of Article III of these Bylaws, Section 3.5 (place of meetings and meetings by telephone), Section 3.7 (regular meetings), Section 3.8 (special meetings and notice), Section 3.9 (quorum), Section 3.10 (waiver of notice), Section 3.11 (adjournment and notice of adjournment), Section 3.12 (conduct of business) and 3.13 (action without a meeting), with such changes in the context of those Bylaws as are necessary to substitute the committee and its members for the board of directors and its members; provided, however, that the time of regular meetings of committees may also be called by resolution of the board of directors and that notice of special meetings of committees shall also be given to all alternate members, who shall have the right to attend all meetings of the committee. The board of directors may adopt rules for the government of any committee not inconsistent with the provisions of these Bylaws.

### **ARTICLE V**

#### **OFFICERS**

##### **5.1. OFFICERS**

The officers of the Corporation shall be a chief executive officer, one or more vice presidents, a secretary and a chief financial officer. The Corporation may also have, at the discretion of the board of directors, a chairman of the board, a president, a chief operating officer, one or more executive, senior or assistant vice presidents, assistant secretaries and any such other officers as may be appointed in accordance with the provisions of Section 5.2 of these Bylaws. Any number of offices may be held by the same person.

##### **5.2. ELECTION OF OFFICERS**

Except as otherwise provided in this Section 5.2, the officers of the Corporation shall be chosen by the board of directors, subject to the rights, if any, of an officer under any contract of employment. The board of directors may appoint, or empower an officer to appoint, such officers and agents of the business as the Corporation may require (whether or not such officer or agent is described in this Article V), each of whom shall hold office for such period, have such authority, and perform such duties as are provided in these Bylaws or as the board of directors may from time to time determine. Any vacancy occurring in any office of the Corporation shall be filled by the board of directors or may be filled by the officer, if any, who appointed such officer.

##### **5.3. REMOVAL AND RESIGNATION OF OFFICERS**

Subject to the rights, if any, of an officer under any contract of employment, any officer may be removed, either with or without cause, by an affirmative vote of the majority of the board of directors at any regular or special meeting of the board or, except in the case of an officer chosen by the board of directors, by any officer upon whom such power of removal may be conferred by the board of directors or, in the case of an officer appointed by another officer, by such other officer.

Any officer may resign at any time by giving written notice to the Corporation. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice; and, unless otherwise specified in that notice, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of the Corporation under any contract to which the officer is a party.

#### 5.4. CHAIRMAN OF THE BOARD

The chairman of the board, if such an officer be elected, shall, if present, preside at meetings of the board of directors and exercise and perform such other powers and duties as may from time to time be assigned to him by the board of directors or as may be prescribed by these Bylaws. If there is no chief executive officer, then the chairman of the board shall also be the chief executive officer of the Corporation and shall have the powers and duties prescribed in Section 5.5 of these Bylaws.

#### 5.5. CHIEF EXECUTIVE OFFICER

The Chief Executive Officer of the Corporation shall, subject to the control of the Board of Directors, have general supervision, direction and control of the business and the officers of the Corporation. He or she shall preside at all meetings of the stockholders and, in the absence or nonexistence of a Chairman of the Board at all meetings of the Board of Directors. He or she shall have the general powers and duties of management usually vested in the chief executive officer of a Corporation, including general supervision, direction and control of the business and supervision of other officers of the Corporation, and shall have such other powers and duties as may be prescribed by the Board of Directors or these Bylaws.

The Chief Executive Officer shall, without limitation, have the authority to execute bonds, mortgages and other contracts requiring a seal, under the seal of the Corporation, except where required or permitted by law to be otherwise signed and executed and except where the signing and execution thereof shall be expressly delegated by the Board of Directors to some other officer or agent of the Corporation.

#### 5.6. PRESIDENT

Subject to such supervisory powers as may be given by these Bylaws or the Board of Directors to the Chairman of the Board or the Chief Executive Officer, if there be such officers, the president shall have general supervision, direction and control of the business and supervision of other officers of the Corporation, and shall have such other powers and duties as may be prescribed by the Board of Directors or these Bylaws. In the event a Chief Executive officer shall not be appointed, the President shall have the duties of such office.

#### 5.7. VICE PRESIDENT

In the absence or disability of the president, the vice presidents, if any, in order of their rank as fixed by the board of directors or, if not ranked, a vice president designated by the board of directors, shall perform all the duties of the chief executive officer and when so acting shall have all the powers of, and be subject to all the restrictions upon, the chief executive officer. The vice presidents shall have such other powers and perform such other duties as from time to time

may be prescribed for them respectively by the board of directors, these Bylaws, the chief executive officer or the chairman of the board.

#### 5.8. SECRETARY

The secretary shall keep or cause to be kept, at the principal executive office of the Corporation or such other place as the board of directors may direct, a book of minutes of all meetings and actions of directors, committees of directors, and stockholders. The minutes shall show the time and place of each meeting, whether regular or special (and, if special, how authorized and the notice given), the names of those present at directors' meetings or committee meetings, the number of shares present or represented at stockholders' meetings, and the proceedings thereof.

The secretary shall keep, or cause to be kept, at the principal executive office of the Corporation or at the office of the Corporation's transfer agent or registrar, as determined by resolution of the board of directors, a share register, or a duplicate share register, showing the names of all stockholders and their addresses, the number and classes of shares held by each, the number and date of certificates evidencing such shares, and the number and date of cancellation of every certificate surrendered for cancellation.

The secretary shall give, or cause to be given, notice of all meetings of the stockholders and of the board of directors required to be given by law or by these Bylaws. He shall keep the seal of the Corporation, if one be adopted, in safe custody and shall have such other powers and perform such other duties as may be prescribed by the board of directors or by these Bylaws.

#### 5.9. CHIEF FINANCIAL OFFICER

The chief financial officer shall keep and maintain, or cause to be kept and maintained, adequate and correct books and records of accounts of the properties and business transactions of the Corporation, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital, retained earnings and shares. The books of account shall at all reasonable times be open to inspection by any director.

The chief financial officer shall deposit all money and other valuables in the name and to the credit of the Corporation with such depositaries as may be designated by the board of directors. He shall disburse the funds of the Corporation as may be ordered by the board of directors, shall render to the chief executive officer and directors, whenever they request it, an account of all of his transactions as treasurer and of the financial condition of the Corporation, and shall have such other powers and perform such other duties as may be prescribed by the board of directors or these Bylaws.

#### 5.10. ASSISTANT SECRETARY

The assistant secretary, or, if there is more than one, the assistant secretaries in the order determined by the stockholders or board of directors (or if there be no such determination, then in the order of their election) shall, in the absence of the secretary or in the event of his or her inability or refusal to act, perform the duties and exercise the powers of the secretary and shall

perform such other duties and have such other powers as the board of directors or the stockholders may from time to time prescribe.

#### **5.11. AUTHORITY AND DUTIES OF OFFICERS**

In addition to the foregoing authority and duties, all officers of the Corporation shall respectively have such authority and perform such duties in the management of the business of the Corporation as may be designated from time to time by the board of directors or the stockholders.

### **ARTICLE VI**

#### **INDEMNITY**

##### **6.1. INDEMNIFICATION OF DIRECTORS AND OFFICERS**

The Corporation shall, to the maximum extent and in the manner permitted by the General Corporation Law of Delaware, indemnify each of its directors and officers against expenses (including attorneys' fees), judgments, fines, settlements, and other amounts actually and reasonably incurred in connection with any proceeding, arising by reason of the fact that such person is or was an agent of the Corporation. For purposes of this Section 6.1, a "director" or "officer" of the Corporation includes any person (i) who is or was a director or officer of the Corporation, (ii) who is or was serving at the request of the Corporation as a director or officer of another Corporation, partnership, joint venture, trust or other enterprise, or (iii) who was a director or officer of a Corporation which was a predecessor Corporation of the Corporation or of another enterprise at the request of such predecessor Corporation.

##### **6.2. INDEMNIFICATION OF OTHERS**

The Corporation shall have the power, to the extent and in the manner permitted by the General Corporation Law of Delaware, to indemnify each of its employees and agents (other than directors and officers) against expenses (including attorneys' fees), judgments, fines, settlements, and other amounts actually and reasonably incurred in connection with any proceeding, arising by reason of the fact that such person is or was an agent of the Corporation. For purposes of this Section 6.2, an "employee" or agent of the corporation (other than a director or officer) includes any person (i) who is or was an employee or agent of the Corporation, (ii) who is or was serving at the request of the Corporation as an employee or agent of another Corporation, partnership, joint venture, trust or other enterprise, or (iii) who was an employee or agent of a Corporation which was a predecessor Corporation of the Corporation or of another enterprise at the request of such predecessor Corporation.

##### **6.3. INSURANCE**

The Corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another Corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Corporation

would have the power to indemnify him against such liability under the provisions of the General Corporation Law of Delaware.

## ARTICLE VII

### RECORDS AND REPORTS

#### 7.1. MAINTENANCE AND INSPECTION OF RECORDS

The corporation shall, either at its principal executive office or at such place or places as designated by the board of directors, keep a record of its stockholders listing their names and addresses and the number and class of shares held by each stockholder, a copy of these Bylaws as amended to date, accounting books, and other records.

Any stockholder of record, in person or by attorney or other agent, shall, upon written demand under oath stating the purpose thereof, have the right during the usual hours for business to inspect for any proper purpose the Corporation's stock ledger, a list of its stockholders, and its other books and records and to make copies or extracts therefrom. A proper purpose shall mean a purpose reasonably related to such person's interest as a stockholder. In every instance where an attorney or other agent is the person who seeks the right to inspection, the demand under oath shall be accompanied by a power of attorney or such other writing that authorizes the attorney or other agent to so act on behalf of the stockholder. The demand under oath shall be directed to the Corporation at its registered office in Delaware or at its principal place of business.

#### 7.2. INSPECTION BY DIRECTORS

Any director shall have the right to examine the Corporation's stock ledger, a list of its stockholders and its other books and records for a purpose reasonably related to his position as a director. The Court of Chancery is hereby vested with the exclusive jurisdiction to determine whether a director is entitled to the inspection sought. The Court may summarily order the Corporation to permit the director to inspect any and all books and records, the stock ledger, and the stock list and to make copies or extracts therefrom. The Court may, in its discretion, prescribe any limitations or conditions with reference to the inspection, or award such other and further relief as the Court may deem just and proper.

#### 7.3. REPRESENTATION OF SHARES OF OTHER CORPORATIONS

The chairman of the board, the chief executive officer, any vice president, the chief financial officer, the secretary or assistant secretary of this Corporation, or any other person authorized by the board of directors or the chief executive officer or a vice president, is authorized to vote, represent, and exercise on behalf of this Corporation all rights incident to any and all shares of any other Corporation or Corporations standing in the name of this Corporation. The authority granted herein may be exercised either by such person directly or by any other person authorized to do so by proxy or power of attorney duly executed by such person having the authority.

## ARTICLE VIII

### GENERAL MATTERS

#### 8.1. CHECKS

From time to time, the board of directors shall determine by resolution which person or persons may sign or endorse all checks, drafts, other orders for payment of money, notes or other evidences of indebtedness that are issued in the name of or payable to the Corporation, and only the persons so authorized shall sign or endorse those instruments.

#### 8.2. EXECUTION OF CORPORATE CONTRACTS AND INSTRUMENTS

The board of directors, except as otherwise provided in these Bylaws, may authorize any officer or officers, or agent or agents, to enter into any contract or execute any instrument in the name of and on behalf of the Corporation; such authority may be general or confined to specific instances. Unless so authorized or ratified by the board of directors or within the agency power of an officer, no officer, agent or employee shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

#### 8.3. STOCK CERTIFICATES; PARTLY PAID-SHARES

The shares of a Corporation shall be represented by certificates, provided that the board of directors of the Corporation may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the Corporation. Notwithstanding the adoption of such a resolution by the board of directors, every holder of stock represented by certificates and upon request every holder of uncertificated shares shall be entitled to have a certificate signed by, or in the name of the Corporation by the chairman or vice-chairman of the board of directors, or the president or vice-president, and by the treasurer or an assistant treasurer, or the secretary or an assistant secretary of such Corporation representing the number of shares registered in certificate form. Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate has to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if he were such officer, transfer agent or registrar at the date of issue.

The Corporation may issue the whole or any part of its shares as partly paid and subject to call for the remainder of the consideration to be paid therefor. Upon the face or back of each stock certificate issued to represent any such partly paid shares, upon the books and records of the Corporation in the case of uncertificated partly paid shares, the total amount of the consideration to be paid therefor and the amount paid thereon shall be stated. Upon the declaration of any dividend on fully paid shares, the Corporation shall declare a dividend upon partly paid shares of the same class, but only upon the basis of the percentage of the consideration actually paid thereon.

#### 8.4. SPECIAL DESIGNATION ON CERTIFICATES

If the Corporation is authorized to issue more than one class of stock or more than one series of any class, then the powers, the designations, the preferences, and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and “or rights shall beset forth in full or summarized on the face or back of the certificate that the Corporation shall issue to represent such class or series of stock; provided, however, that, except as otherwise provided in Section 202 of the General Corporation Law of Delaware, in lieu of the foregoing requirements there may be set forth on the face or back of the certificate that the Corporation shall issue to represent such class or series of stock a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, the designations, the preferences, and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and” or rights.

#### 8.5. LOST CERTIFICATES

Except as provided in this Section 8.5, no new certificates for shares shall be issued to replace a previously issued certificate unless the latter is surrendered to the Corporation and canceled at the same time. The Corporation may issue a new certificate of stock or uncertificated shares in the place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the Corporation may require the owner of the lost, stolen or destroyed certificate, or his legal representative, to give the Corporation a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate or uncertificated shares.

#### 8.6. CONSTRUCTION; DEFINITIONS

Unless the context requires otherwise, the general provisions, rules of construction, and definitions in the Delaware General Corporation Law shall govern the construction of these Bylaws. Without limiting the generality of this provision, the singular number includes the plural, the plural number includes the singular, and the term “person” includes both a Corporation and a natural person.

#### 8.7. DIVIDENDS

The directors of the Corporation, subject to any restrictions contained in the certificate of incorporation, may declare and pay dividends upon the shares of its capital stock pursuant to the General Corporation Law of Delaware. Dividends may be paid in cash, in property, or in shares of the Corporation’s capital stock.

The directors of the Corporation may set apart out of any of the funds of the Corporation available for dividends a reserve or reserves for any proper purpose and may abolish any such reserve. Such purposes shall include but not be limited to equalizing dividends, repairing or maintaining any property of the Corporation, and meeting contingencies.

8.8. FISCAL YEAR

The fiscal year of the Corporation shall be fixed by resolution of the board of directors and may be changed by the board of directors.

8.9. SEAL

The Corporation may adopt a corporate seal, which may be altered at pleasure, and may use the same by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced.

8.10. TRANSFER OF STOCK

Upon surrender to the Corporation or the transfer agent of the Corporation of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignation or authority to transfer, it shall be the duty of the Corporation to issue a new certificate to the person entitled thereto, cancel the old certificate, and record the transaction in its books.

8.11. STOCK TRANSFER AGREEMENTS

The Corporation shall have power to enter into and perform any agreement with any number of stockholders of any one or more classes of stock of the Corporation to restrict the transfer of shares of stock of the Corporation of any one or more classes owned by such stockholders in any manner not prohibited by the General Corporation Law of Delaware.

8.12. REGISTERED STOCKHOLDERS

The Corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends and to vote as such owner, shall be entitled to hold liable for calls and assessments the person registered on its books as the owner of shares, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of another person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

## ARTICLE IX

### AMENDMENTS

The original or other Bylaws of the Corporation may be adopted, amended or repealed by the stockholders entitled to vote; provided, however, that the Corporation may, in its certificate of incorporation, confer the power to adopt, amend or repeal Bylaws upon the directors. The fact that such power has been so conferred upon the directors shall not divest the stockholders of the power, nor limit their power to adopt, amend or repeal Bylaws.

## ARTICLE X

### DISSOLUTION

If it should be deemed advisable in the judgment of the board of directors of the Corporation that the Corporation should be dissolved, the board, after the adoption of a resolution to that effect by a majority of the whole board at any meeting called for that purpose, shall cause notice to be mailed to each stockholder entitled to vote thereon of the adoption of the resolution and of a meeting of stockholders to take action upon the resolution.

At the meeting a vote shall be taken for and against the proposed dissolution. If a majority of the outstanding stock of the Corporation entitled to vote thereon votes for the proposed dissolution, then a certificate stating that the dissolution has been authorized in accordance with the provisions of Section 275 of the General Corporation Law of Delaware and setting forth the names and residences of the directors and officers shall be executed, acknowledged, and filed and shall become effective in accordance with Section 103 of the General Corporation Law of Delaware. Upon such certificate's becoming effective in accordance with Section 103 of the General Corporation Law of Delaware, the Corporation shall be dissolved.

## ARTICLE XI

### CUSTODIAN

#### 11.1. APPOINTMENT OF A CUSTODIAN IN CERTAIN CASES

The Court of Chancery, upon application of any stockholder, may appoint one or more persons to be custodians and, if the Corporation is insolvent, to be receivers, of and for the Corporation when:

- (i) at any meeting held for the election of directors the stockholders are so divided that they have failed to elect successors to directors whose terms have expired or would have expired upon qualification of their successors; or
- (ii) the business of the Corporation is suffering or is threatened with irreparable injury because the directors are so divided respecting the management of the affairs of the Corporation that the required vote for action by the board of directors cannot be obtained and the stockholders are unable to terminate this division; or
- (iii) the Corporation has abandoned its business and has failed within a reasonable time to take steps to dissolve, liquidate or distribute its assets.

#### 11.2. DUTIES OF CUSTODIAN

The custodian shall have all the powers and title of a receiver appointed under Section 291 of the General Corporation Law of Delaware, but the authority of the custodian shall be to continue the business of the Corporation and not to liquidate its affairs and distribute its assets,

except when the Court of Chancery otherwise orders and except in cases arising under Sections 226(a)(3) or 352(a)(2) of the General Corporation Law of Delaware.

## ARTICLE XII

### LOANS TO OFFICERS

The corporation may lend money to, or guarantee any obligation of, or otherwise assist any officer or other employee of the corporation or of its subsidiaries, including any officer or employee who is a Director of the corporation or its subsidiaries, whenever, in the judgment of the Board of Directors, such loan, guarantee or assistance may reasonably be expected to benefit the corporation. The loan, guarantee or other assistance may be with or without interest and may be unsecured, or secured in such manner as the Board of Directors shall approve, including, without limitation, a pledge of shares of stock of the corporation. Nothing in this Bylaw shall be deemed to deny, limit or restrict the powers of guaranty or warranty of the corporation at common law or under any statute.

**Exhibit 3.3**

### **AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF ACORDA THERAPEUTICS, INC.**

The name of the corporation (the “**Corporation**”) is Acorda Therapeutics, Inc. The original certificate of incorporation was filed with the Secretary of State of the State of Delaware on March 17, 1995.

This Amended and Restated Certificate of Incorporation (this “**Certificate of Incorporation**”) was duly adopted by the board of directors and the stockholders of the Corporation in accordance with Sections 141(f), 228, 242 and 245 of the General Corporation Law of the State of Delaware (the “**DGCL**”).

The original Certificate of Incorporation of the Corporation, as amended and restated to date, is hereby further amended and restated to read in full as follows:

**FIRST:** The name of the Corporation is Acorda Therapeutics, Inc.

**SECOND:** The registered office of the Corporation is to be located at 1209 Orange Street, Wilmington, (New Castle County), Delaware 19801. The name of its registered agent at that address is The Corporation Trust Company.

**THIRD:** The purpose of the Corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of Delaware.

**FOURTH:** The Corporation shall have the authority to issue a total of 100,000,000 shares, divided into classes of (i) 80,000,000 shares of Common Stock, \$0.001 par value per share (the “**Common Stock**”), and (ii) 20,000,000 shares of Preferred Stock, \$0.001 par value per share (the “**Preferred Stock**”).

The following is a statement of the designations and the powers, privileges and rights, and the qualifications, limitations or restrictions thereof in respect of each class of capital stock of the Corporation.

#### A      COMMON STOCK.

1.      General. The voting, dividend and liquidation rights of the holders of the Common Stock are subject to, and qualified by, the rights of the holders of the Preferred Stock of any series as may be designated by the Board of Directors upon any issuance of the Preferred Stock of any series.

2.      Voting. The holders of the Common Stock shall have voting rights at all meetings of stockholders, each such holder being entitled to one vote for each share thereof held by such holder; *provided, however,* that, except as otherwise required by law, holders of Common Stock, as such, shall not be entitled to vote on any amendment to this Certificate of

---

Incorporation (which, as used herein, shall mean the certificate of incorporation of the Corporation, as amended from time to time, including the terms of any certificate of designation of any series of Preferred Stock) that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together with the holders of one or more other such series, to vote thereon pursuant to this Certificate of Incorporation. There shall be no cumulative voting.

The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the stock of the Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the General Corporation Law of the State of Delaware.

3. Dividends. Dividends may be declared and paid on the Common Stock from funds lawfully available therefor as, if and when determined by the Board of Directors and subject to any limitations or restrictions contained in, or any preferential dividend rights of, any then outstanding Preferred Stock.

4. Liquidation. Upon the voluntary or involuntary dissolution, liquidation or winding up of the Corporation, holders of Common Stock will be entitled to receive all assets of the Corporation available for distribution to its stockholders, subject to any preferential or other rights of any then outstanding Preferred Stock.

5. Redemption. The Common Stock is not redeemable by its terms.

B PREFERRED STOCK.

Preferred Stock may be issued from time to time in one or more series, each of such series to have such terms as stated or expressed herein and in the resolution or resolutions providing for the issue of such series adopted by the Board of Directors as hereinafter provided. Any shares of Preferred Stock which may be redeemed, purchased or acquired by the Corporation may be reissued except as otherwise provided by law. Different series of Preferred Stock shall not be construed to constitute different classes of shares for the purposes of voting by classes unless expressly provided.

Authority hereby is expressly granted to the Board of Directors from time to time to issue the Preferred Stock in one or more series, and in connection with the creation of any such series, by resolution or resolutions providing for the issuance of the shares thereof, to determine and fix the number of shares of such series and such voting powers, full or limited, or no voting powers, and such designations, preferences and relative participating, optional or other special rights, and qualifications, limitations or restrictions thereof, including without limitation thereof, dividend rights, conversion rights, redemption privileges and liquidation preferences, as shall be stated and expressed in such resolutions, all to the full extent now or hereafter permitted by Delaware law. Without limiting the generality of the foregoing, the resolutions providing for issuance of any series of Preferred Stock may provide that such series shall be superior or rank equally or be junior to the Preferred Stock of any other series to the extent permitted by law. Except as otherwise provided in this Certificate of Incorporation, no vote of the holders of the Preferred Stock or Common Stock shall be a prerequisite to the designation or issuance of any shares of

any series of the Preferred Stock authorized by and complying with the conditions of this Certificate of Incorporation, the right to have such vote being expressly waived by all present and future holders of the capital stock of the Corporation.

The number of authorized shares of Preferred Stock may be increased or decreased (but not below the number of shares then outstanding) by the affirmative vote of the holders of a majority of the stock of the Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the General Corporation Law of the State of Delaware.

**FIFTH:** Except as otherwise provided herein, the Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute and this Certificate of Incorporation, and all rights conferred upon stockholders herein are granted subject to this reservation.

**SIXTH:** In furtherance and not in limitation of the powers conferred upon it by the laws of the State of Delaware, and subject to the terms of any series of Preferred Stock, the Board of Directors shall have the power to adopt, amend, alter or repeal the Bylaws of the Corporation by the affirmative vote of a majority of the directors present at any regular or special meeting of the Board of Directors at which a quorum is present. The Bylaws of the Corporation also may be adopted, amended, altered or repealed by the affirmative vote of the holders of at least seventy-five percent (75%) of the votes which all the stockholders would be entitled to cast in any annual election of directors or class of directors, in addition to any other vote required by this Certificate of Incorporation. Notwithstanding any other provisions of law, this Certificate of Incorporation or the Bylaws of the Corporation, and notwithstanding the fact that a lesser percentage may be specified by law, the affirmative vote of the holders of at least seventy-five percent (75%) of the votes which all the stockholders would be entitled to cast in any annual election of directors or class of directors shall be required to amend or repeal, or to adopt any provision of this Certificate of Incorporation or the Bylaws of the Corporation inconsistent with, this Article Sixth.

**SEVENTH:** A director of the Corporation shall not be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the Delaware General Corporation Law, or (iv) for any transaction from which the director derived an improper personal benefit. No amendment or repeal of this Article Seventh, or subsequently adopted inconsistent provision of this Certificate of Incorporation shall decrease the protection afforded to a director by this Article with respect to any act or omission of the director occurring prior to such amendment, repeal or adoption of an inconsistent provision.

**EIGHTH:** (a) (i) The Corporation shall indemnify and hold harmless to the full extent not prohibited by law, as the same exists or may hereinafter be amended, interpreted or implemented (but, in the case of any amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than are permitted the Corporation to provide prior to such amendment), each person who was or is made a party or is threatened to be made a party to or is otherwise involved in (as a witness or otherwise) any threatened, pending or

completed action, suit or proceeding, whether civil, criminal, administrative or investigative and whether or not by or in the right of the Corporation or otherwise (hereinafter, a “*proceeding*”) by reason of the fact that he or she, or a person of whom he or she is the heir, executor or administrator, is or was a director or officer of the Corporation or is or was serving at the request of the Corporation as a director, officer or trustee of another corporation or of a partnership, joint venture, trust or other enterprise (including without limitation, service with respect to employee benefit plans), or where the basis of such proceeding is any alleged action or failure to take any action by such person while acting in an official capacity as director or officer of the Corporation or in any other capacity on behalf of the Corporation while such person is or was serving as a director or officer of the Corporation, against all expenses, liability and loss, including but not limited to attorneys’ fees, judgments, fine, ERISA excise taxes or penalties and amounts paid or to be paid in settlement (whether with or without court approval), actually and reasonably incurred or paid by such person in connection therewith.

(ii) Notwithstanding the foregoing, except as provided in subsection (b) of this Article Eighth, the Corporation shall indemnify any such person seeking indemnification in connection with a proceeding (or part thereof) initiated by such person only if such proceeding (or part thereof) was authorized by the board of directors of the Corporation.

(iii) Subject to the limitation set forth above concerning proceedings initiated by the person seeking indemnification, the right to indemnification conferred in this Article Eighth shall include the option to be reimbursed by the Corporation the expenses incurred in defending any such proceeding (or part thereof) or in enforcing his or her rights under this Article Eighth in advance of the final disposition thereof promptly after receipt by the Corporation of a request therefor stating in reasonable detail the expenses incurred; *provided, however,* that to the extent required by law, the payment of such expenses incurred by a director or officer of the Corporation in advance of the final disposition of a proceeding shall be made only upon receipt of an undertaking by or on behalf of such person, to repay all amounts so advanced if and to the extent it shall ultimately be determined by a court that he or she is not entitled to be indemnified by the Corporation under this Article Eighth or otherwise.

(iv) The right to indemnification and advancement of expenses provided herein shall continue as to a person who has ceased to be a director or officer of the Corporation or to serve in any of the other capacities described herein, and shall inure to the benefit of the heirs executors and administrators of such person.

(b) If a claim for indemnification under subsection (a) of this Article Eighth is not paid in full by the Corporation within thirty (30) days after a written claim therefor has been received by the Corporation, the claimant may, at any time thereafter, bring suit against the Corporation to recover the unpaid amount of the claim, and if successful in whole or in part on the merits or otherwise in establishing his or her right to indemnification or to the advancement of expenses, the claimant shall be entitled to be paid also the expense of prosecuting such claim.

(c) The right to indemnification and the payment of expenses incurred in defending a proceeding in advance of a final disposition conferred in subsection (a) of this Article Eighth and the right to payment of expenses conferred in subsection (b) of this Article Eighth shall not be deemed exclusive of any other rights to which those seeking indemnification

or advancement of expenses hereunder may be entitled under any bylaw, agreement, vote of stockholders, vote of disinterested directors or otherwise, both as to actions in his or her official capacity and as to actions in any other capacity while holding that office, the Corporation having the express authority to enter into such agreements or arrangements as the board of directors deems appropriate for the indemnification of and advancement of expenses to present or future directors and officers as well as employees, representatives or agents of the Corporation in connection with their status with or services to or on behalf of the Corporation or any other corporation, partnership, joint venture, trust or other enterprise, including any employee benefit plan, for which such person is serving at the request of the Corporation.

(d) The Corporation may create a fund of any nature, which may, but need not, be under the control of a trustee, or otherwise secure or insure in any manner its indemnification obligations, including its obligation to advance expenses, whether arising under or pursuant to this Article Eighth or otherwise.

(e) The Corporation may purchase and maintain insurance on behalf of any person who is or was a director or officer or representative of the Corporation, or is or was serving at the request of the Corporation as a representative of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against such person and incurred by such person in any such capacity, or arising out of his or her status as such, whether or not the Corporation has the power to indemnify such person against such liability under the laws of this or any other state.

(f) Neither the modification, amendment, alteration or repeal of this Article Eighth or any of its provisions nor the adoption of any provision inconsistent with this Article Eighth or any of its provisions shall adversely affect the rights of any person to indemnification and advancement of expenses existing at the time of such modification, amendment, alteration or repeal or the adoption of such inconsistent provision.

**NINTH:** This Article Ninth is inserted for the management of the business and for the conduct of the affairs of the Corporation.

1. General Powers. The business and affairs of the Corporation shall be managed by or under the direction of the Corporation's Board of Directors.

2. Number of Directors; Election of Directors. Subject to the rights of holders of any series of Preferred Stock to elect directors, the number of directors of the Corporation shall be established from time to time by the Board of Directors. Election of directors need not be by written ballot, except as and to the extent provided in the Bylaws of the Corporation.

3. Classes of Directors. Subject to the rights of holders of any series of Preferred Stock to elect directors, the Board of Directors shall be and is divided into three classes: Class I, Class II and Class III.

4. Terms of Office. Subject to the rights of holders of any series of Preferred Stock to elect directors, each director shall serve for a term ending on the date of the third annual meeting following the annual meeting at which such director was elected; *provided*, that each

director initially appointed to Class I shall serve for a term expiring at the Corporation's annual meeting of stockholders held in 2006; each director initially appointed to Class II shall serve for a term expiring at the Corporation's annual meeting of stockholders held in 2007; and each director initially appointed to Class III shall serve for a term expiring at the Corporation's annual meeting of stockholders held in 2008; *provided, further*, that the term of each director shall continue until the election and qualification of his successor and be subject to his earlier death, resignation or removal.

5. Quorum. A majority of the directors at any time in office shall constitute a quorum. If at any meeting of the Board of Directors there shall be less than such a quorum, a majority of the directors present may adjourn the meeting from time to time without further notice other than announcement at the meeting, until a quorum shall be present.

6. Action at Meeting. Every act or decision done or made by a majority of the directors present at a meeting duly held at which a quorum is present shall be regarded as the act of the Board of Directors unless a greater number is required by law or by this Certificate of Incorporation.

7. Removal. Subject to the rights of holders of any series of Preferred Stock, directors of the Corporation may be removed only for cause and only by the affirmative vote of the holders of at least seventy-five percent (75%) of the votes which all the stockholders would be entitled to cast in any annual election of directors or class of directors.

8. Vacancies. Subject to the rights of holders of any series of Preferred Stock, any vacancy or newly created directorships in the Board of Directors, however occurring, shall be filled only by vote of a majority of the directors then in office, although less than a quorum, or by a sole remaining director and shall not be filled by the stockholders. A director elected to fill a vacancy shall hold office until the next election of the class for which such director shall have been chosen, subject to the election and qualification of a successor and to such director's earlier death, resignation or removal.

9. Stockholder Nominations and Introduction of Business, Etc.. Advance notice of stockholder nominations for election of directors and other business to be brought by stockholders before a meeting of stockholders shall be given in the manner provided by the Bylaws of the Corporation.

10. Amendments to Article. Notwithstanding any other provisions of law, this Certificate of Incorporation or the Bylaws of the Corporation, and notwithstanding the fact that a lesser percentage may be specified by law, the affirmative vote of the holders of at least seventy-five percent (75%) of the votes which all the stockholders would be entitled to cast in any annual election of directors or class of directors shall be required to amend or repeal, or to adopt any provision inconsistent with, this Article Ninth.

**TENTH:** Stockholders of the Corporation may not take any action by written consent in lieu of a meeting. Notwithstanding any other provisions of law, this Certificate of Incorporation or the Bylaws of the Corporation, and notwithstanding the fact that a lesser percentage may be specified by law, the affirmative vote of the holders of at least seventy-five percent (75%) of the

votes which all the stockholders would be entitled to cast in any annual election of directors or class of directors shall be required to amend or repeal, or to adopt any provision inconsistent with, this Article Tenth.

**ELEVENTH:** Special meetings of stockholders for any purpose or purposes may be called at any time by the Board of Directors, the Chairman of the Board or the Chief Executive Officer, but such special meetings may not be called by any other person or persons. Business transacted at any special meeting of stockholders shall be limited to matters relating to the purpose or purposes stated in the notice of meeting. Notwithstanding any other provision of law, this Certificate of Incorporation or the Bylaws of the Corporation, and notwithstanding the fact that a lesser percentage may be specified by law, the affirmative vote of the holders of at least seventy-five percent (75%) of the votes which all the stockholders would be entitled to cast in any annual election of directors or class of directors shall be required to amend or repeal, or to adopt any provision inconsistent with, this Article Eleventh.

IN WITNESS WHEREOF, this Amended and Restated Certificate of Incorporation, which restates, integrates and amends the certificate of incorporation of the Corporation, as amended and restated to date, and which has been duly adopted in accordance with Sections 242 and 245 of the General Corporation Law of the State of Delaware, has been executed by its duly authorized officer this      day of      , 2005.

ACORDA THERAPEUTICS, INC.

By: \_\_\_\_\_  
Name: Ron Cohen  
Title: Chief Executive Officer

Attest:

---

Jane Wasman  
Secretary

---

**Exhibit 3.4**

**AMENDED AND RESTATED BYLAWS  
OF  
ACORDA THERAPEUTICS, INC.**

**ARTICLE I**

**STOCKHOLDERS**

1.1     Place of Meetings. All meetings of stockholders shall be held at such place as may be designated from time to time by the Board of Directors, the Chairman of the Board or the Chief Executive Officer or, if not so designated, at the principal office of the corporation.

1.2     Annual Meeting. The annual meeting of stockholders for the election of directors and for the transaction of such other business as may properly be brought before the meeting shall be held on a date and at a time designated by the Board of Directors, the Chairman of the Board or the Chief Executive Officer (which date shall not be a legal holiday in the place where the meeting is to be held). If no annual meeting is held in accordance with the foregoing provisions, a special meeting may be held in lieu of the annual meeting, and any action taken at that special meeting shall have the same effect as if it had been taken at the annual meeting, and in such case all references in these Bylaws to the annual meeting of the stockholders shall be deemed to refer to such special meeting.

1.3     Special Meetings. Special meetings of stockholders for any purpose or purposes may be called at any time by the Board of Directors, the Chairman of the Board or the Chief Executive Officer, but such special meetings may not be called by any other person or persons. Business transacted at any special meeting of stockholders shall be limited to matters relating to the purpose or purposes stated in the notice of meeting.

1.4     Notice of Meetings. Except as otherwise provided by law, notice of each meeting of stockholders, whether annual or special, shall be given not less than 10 nor more than 60 days before the date of the meeting to each stockholder entitled to vote at such meeting. Without limiting the manner by which notice otherwise may be given to stockholders, any notice shall be effective if given by a form of electronic transmission consented to (in a manner consistent with Delaware law) by the stockholder to whom the notice is given. The notices of all meetings shall state the place, date and time of the meeting and the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting. The notice of a special meeting shall state, in addition, the purpose or purposes for which the meeting is called. If notice is given by mail, such notice shall be deemed given when deposited in the United States mail, postage prepaid, directed to the stockholder at such stockholder's address as it appears on the records of the corporation. If notice is given by electronic transmission, such notice shall be deemed given at the time specified in Section 232 of the General Corporation Law of the State of Delaware.

1.5     Voting List. The Secretary shall prepare, at least 10 days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in

---

alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, for a period of at least 10 days prior to the meeting: (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with notice of the meeting, or (ii) during ordinary business hours, at the principal place of business of the corporation. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present.

1.6     Quorum. Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, the holders of a majority of the shares of the capital stock of the corporation issued and outstanding and entitled to vote at the meeting, present in person, present by means of remote communication in a manner, if any, authorized by the Board of Directors in its sole discretion, or represented by proxy, shall constitute a quorum for the transaction of business. A quorum, once established at a meeting, shall not be broken by the withdrawal of enough votes to leave less than a quorum.

1.7     Adjournments. Any meeting of stockholders may be adjourned from time to time to any other time and to any other place at which a meeting of stockholders may be held under these Bylaws by the stockholders present or represented at the meeting and entitled to vote, although less than a quorum, or, if no stockholder is present, by any officer entitled to preside at or to act as secretary of such meeting. It shall not be necessary to notify any stockholder of any adjournment of less than 30 days if the time and place of the adjourned meeting, and the means of remote communication, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such adjourned meeting, are announced at the meeting at which adjournment is taken, unless after the adjournment a new record date is fixed for the adjourned meeting. At the adjourned meeting, the corporation may transact any business which might have been transacted at the original meeting.

1.8     Voting and Proxies. Each stockholder shall have one vote for each share of stock entitled to vote held of record by such stockholder and a proportionate vote for each fractional share so held, unless otherwise provided by law or the Certificate of Incorporation. Each stockholder of record entitled to vote at a meeting of stockholders may vote in person (including by means of remote communications, if any, by which stockholders may be deemed to be present in person and vote at such meeting) or may authorize another person or persons to vote for such stockholder by a proxy executed or transmitted in a manner permitted by Delaware law by the stockholder or such stockholder's authorized agent and delivered (including by electronic transmission) to the Secretary of the corporation. No such proxy shall be voted upon after three years from the date of its execution, unless the proxy expressly provides for a longer period.

1.9     Action at Meeting. When a quorum is present at any meeting, any matter other than the election of directors to be voted upon by the stockholders at such meeting shall be decided by the affirmative vote of the holders of shares of stock having a majority of the votes cast by the holders of all of the shares of stock present or represented and voting on such matter (or if there are two or more classes of stock entitled to vote as separate classes, then in the case of each such class, the holders of a majority of the stock of that class present or represented and voting on such matter), except when a different vote is required by law, the Certificate of

Incorporation or these Bylaws. When a quorum is present at any meeting, any election by stockholders of directors shall be determined by a plurality of the votes cast by the stockholders entitled to vote on the election.

1.10      Nomination of Directors.

(a) Except for (i) any directors entitled to be elected by the holders of preferred stock, (ii) any directors elected in accordance with Section 2.8 hereof by the Board of Directors to fill a vacancy or newly-created directorships, or (iii) as otherwise required by applicable law or stock market regulation, only persons who are nominated in accordance with the procedures in this Section 1.10 shall be eligible for election as directors. Nomination for election to the Board of Directors of the corporation at a meeting of stockholders may be made (i) by or at the direction of the Board of Directors or (ii) by any stockholder of the corporation who (x) complies with the notice procedures set forth in Section 1.10(b) and (y) is a stockholder of record on the date of the giving of such notice and on the record date for the determination of stockholders entitled to vote at such meeting.

(b) To be timely, a stockholder's notice must be received in writing by the Secretary at the principal executive offices of the corporation as follows: (x) in the case of an election of directors at an annual meeting of stockholders, not less than 90 days nor more than 120 days prior to the first anniversary of the preceding year's annual meeting; *provided, however,* that in the event that the date of the annual meeting is advanced by more than 20 days, or delayed by more than 60 days, from the first anniversary of the preceding year's annual meeting, a stockholder's notice must be so received not earlier than the 120th day prior to such annual meeting and not later than the close of business on the later of (A) the 90th day prior to such annual meeting and (B) the tenth day following the day on which notice of the date of such annual meeting was mailed or public disclosure of the date of such annual meeting was made, whichever first occurs; or (y) in the case of an election of directors at a special meeting of stockholders, not earlier than the 120th day prior to such special meeting and not later than the close of business on the later of (A) the 90th day prior to such special meeting and (B) the tenth day following the day on which notice of the date of such special meeting was mailed or public disclosure of the date of such special meeting was made, whichever first occurs.

The stockholder's notice to the Secretary shall set forth: (x) as to each proposed nominee (i) such person's name, age, business address and, if known, residence address, (ii) such person's principal occupation or employment, (iii) the class and number of shares of stock of the corporation which are beneficially owned by such person, and (iv) any other information concerning such person that must be disclosed as to nominees in proxy solicitations pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"); (y) as to the stockholder giving the notice (i) such stockholder's name and address, as they appear on the corporation's books, (ii) the class and number of shares of stock of the corporation which are owned, beneficially and of record, by such stockholder, (iii) a description of all arrangements or understandings between such stockholder and each proposed nominee and any other person or persons (including their names) pursuant to which the nomination(s) are to be made by such stockholder, (iv) a representation that such stockholder intends to appear in person or by proxy at the meeting to nominate the person(s) named in its notice and (v) a representation whether the stockholder intends or is part of a group which intends (A) to deliver a proxy

statement and/or form of proxy to holders of at least the percentage of the corporation's outstanding capital stock required to elect the nominee and/or (B) otherwise to solicit proxies from stockholders in support of such nomination; and (z) as to the beneficial owner, if any, on whose behalf the nomination is being made (i) such beneficial owner's name and address, (ii) the class and number of shares of stock of the corporation which are beneficially owned by such beneficial owner, (iii) a description of all arrangements or understandings between such beneficial owner and each proposed nominee and any other person or persons (including their names) pursuant to which the nomination(s) are to be made and (iv) a representation whether the beneficial owner intends or is part of a group which intends (A) to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the corporation's outstanding capital stock requirement to elect the nominee and/or (B) otherwise to solicit proxies from stockholders in support of such nomination. In addition, to be effective, the stockholder's notice must be accompanied by the written consent of the proposed nominee to serve as a director if elected. The corporation may require any proposed nominee to furnish such other information as may reasonably be required to determine the eligibility of such proposed nominee to serve as a director of the corporation. A stockholder shall not have complied with this Section 1.10(b) if the stockholder or beneficial owner, if any, on whose behalf the nomination is made solicited (or is part of a group which solicited) or did not so solicit, as the case may be, proxies in support of such stockholder's nominee in compliance with the representations with respect thereto required by this Section 1.10.

(c) The chairman of any meeting shall, if the facts warrant, determine that a nomination was not made in accordance with the provisions of this Section 1.10 (including whether the stockholder or beneficial owner, if any, on whose behalf the nomination is made solicited (or is part of a group which solicited) or did not so solicit, as the case may be, proxies in support of such stockholder's nominee in compliance with the representations with respect thereto required by this Section 1.10).

(d) Except as otherwise required by law, nothing in this Section 1.10 shall obligate the corporation or the Board of Directors to include in any proxy statement or other stockholder communication distributed on behalf of the corporation or the Board of Directors information with respect to any nominee for director submitted by a stockholder.

(e) Notwithstanding the foregoing provisions of this Section 1.10, if the stockholder (or a qualified representative of the stockholder) does not appear at the annual or special meeting of stockholders of the corporation to present a nomination, such nomination shall be disregarded, notwithstanding that proxies in respect of such vote may have been received by the corporation.

(f) For purposes of this Section 1.10, "public disclosure" shall include disclosure in a press release reported by the Dow Jones New Service, Associated Press or comparable national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act.

---

1.11     Notice of Business at Annual Meetings.

(a)       At any annual meeting of the stockholders, only such business shall be conducted as shall have been properly brought before the meeting. To be properly brought before an annual meeting, business must be (i) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors, (ii) otherwise properly brought before the meeting by or at the direction of the Board of Directors, or (iii) properly brought before the meeting by a stockholder. For business to be properly brought before an annual meeting by a stockholder, (x) if such business relates to the nomination of a person for election as a director of the corporation, the procedures in Section 1.10 must be complied with and (y) if such business relates to any other matter, the stockholder must (A) have given timely notice thereof in writing to the Secretary in accordance with the procedures set forth in Section 1.11(b) and (B) be a stockholder of record on the date of the giving of such notice and on the record date for the determination of stockholders entitled to vote at such annual meeting.

(b)       To be timely, a stockholder's notice must be received in writing by the Secretary at the principal executive offices of the corporation not less than 90 days nor more than 120 days prior to the first anniversary of the preceding year's annual meeting; *provided*, *however*, that in the event that the date of the annual meeting is advanced by more than 20 days, or delayed by more than 60 days, from the first anniversary of the preceding year's annual meeting, a stockholder's notice must be so received not earlier than the 120th day prior to such annual meeting and not later than the close of business on the later of (A) the 90th day prior to such annual meeting and (B) the tenth day following the day on which notice of the date of such annual meeting was mailed or public disclosure of the date of such annual meeting was made, whichever first occurs.

The stockholder's notice to the Secretary shall set forth as to each matter the stockholder proposes to bring before the annual meeting (i) a brief description of the business desired to be brought before the annual meeting and the reasons for conducting such business at the annual meeting, (ii) the name and address, as they appear on the corporation's books, of the stockholder proposing such business, and the name and address of the beneficial owner, if any, on whose behalf the proposal is made, (iii) the class and number of shares of stock of the corporation which are owned, of record and beneficially, by the stockholder and beneficial owner, if any, (iv) a description of all arrangements or understandings between such stockholder or such beneficial owner, if any, and any other person or persons (including their names) in connection with the proposal of such business by such stockholder and any material interest of the stockholder or such beneficial owner, if any, in such business, (v) a representation that such stockholder intends to appear in person or by proxy at the annual meeting to bring such business before the meeting and (vi) a representation whether the stockholder or the beneficial owner, if any, intends or is part of a group which intends (A) to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the corporation's outstanding capital stock required to approve or adopt the proposal and/or (B) otherwise to solicit proxies from stockholders in support of such proposal. Notwithstanding anything in these Bylaws to the contrary, no business shall be conducted at any annual meeting of stockholders except in accordance with the procedures set forth in this Section 1.11; *provided*, that any stockholder proposal which complies with Rule 14a-8 of the proxy rules (or any successor provision) promulgated under the Securities Exchange Act of 1934, as amended, and is to be included in the corporation's proxy statement for an annual meeting of stockholders shall be deemed to comply with the requirements of this Section 1.11. A stockholder shall not have complied with this Section 1.11(b) if the stockholder

or beneficial owner, if any, on whose behalf the nomination is made solicited (or is part of a group which solicited) or did not so solicit, as the case may be, proxies in support of such stockholder's nominee in compliance with the representations with respect thereto required by this Section 1.11.

(c) The chairman of any meeting shall, if the facts warrant, determine that business was not properly brought before the meeting in accordance with the provisions of this Section 1.11 (including whether the stockholder or beneficial owner, if any, on whose behalf the proposal is made solicited (or is part of a group which solicited) or did not so solicit, as the case may be, proxies in support of such stockholder's proposal in compliance with the representation with respect thereto required by this Section 1.11), and if the chairman should so determine, the chairman shall so declare to the meeting and such business shall not be brought before the meeting.

(d) Notwithstanding the foregoing provisions of this Section 1.11, if the stockholder (or a qualified representative of the stockholder) does not appear at the annual meeting of stockholders of the corporation to present business, such business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the corporation.

(e) For purposes of this Section 1.11, "public disclosure" shall include disclosure in a press release reported by the Dow Jones New Service, Associated Press or comparable national news service or in a document publicly filed by the corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act.

1.12 Conduct of Meetings.

(a) Meetings of stockholders shall be presided over by the Chairman of the Board, if any, or in the Chairman's absence by the Vice Chairman of the Board, if any, or in the Vice Chairman's absence by the Chief Executive Officer, or in the Chief Executive Officer's absence by the President, or in the President's absence by a Vice President, or in the absence of all of the foregoing persons by a chairman designated by the Board of Directors, or in the absence of such designation by a chairman chosen by vote of the stockholders at the meeting. The Secretary shall act as secretary of the meeting, but in the Secretary's absence the chairman of the meeting may appoint any person to act as secretary of the meeting.

(b) The Board of Directors of the corporation may adopt by resolution such rules, regulations and procedures for the conduct of any meeting of stockholders of the corporation as it shall deem appropriate including, without limitation, such guidelines and procedures as it may deem appropriate regarding the participation by means of remote communication of stockholders and proxyholders not physically present at a meeting. Except to the extent inconsistent with such rules, regulations and procedures as adopted by the Board of Directors, the chairman of any meeting of stockholders shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board of Directors or prescribed by the chairman of the meeting, may include, without limitation, the following: (i) the establishment of an agenda or

order of business for the meeting; (ii) rules and procedures for maintaining order at the meeting and the safety of those present; (iii) limitations on attendance at or participation in the meeting to stockholders of record of the corporation, their duly authorized and constituted proxies or such other persons as shall be determined; (iv) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (v) limitations on the time allotted to questions or comments by participants. Unless and to the extent determined by the Board of Directors or the chairman of the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

(c) The chairman of the meeting shall announce at the meeting when the polls for each matter to be voted upon at the meeting will be opened and closed. If no announcement is made, the polls shall be deemed to have opened when the meeting is convened and closed upon the final adjournment of the meeting. After the polls close, no ballots, proxies or votes or any revocations or changes thereto may be accepted.

(d) In advance of any meeting of stockholders, the Board of Directors, the Chairman of the Board or the Chief Executive Officer shall appoint one or more inspectors of election to act at the meeting and make a written report thereof. One or more other persons may be designated as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is present, ready and willing to act at a meeting of stockholders, the chairman of the meeting shall appoint one or more inspectors to act at the meeting. Unless otherwise required by law, inspectors may be officers, employees or agents of the corporation. Each inspector, before entering upon the discharge of such inspector's duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of such inspector's ability. The inspector shall have the duties prescribed by law and shall take charge of the polls and, when the vote is completed, shall make a certificate of the result of the vote taken and of such other facts as may be required by law.

1.13 No Action by Consent in Lieu of a Meeting. Stockholders of the corporation may not take any action by written consent in lieu of a meeting.

## **ARTICLE II**

### **DIRECTORS**

2.1 General Powers. The business and affairs of the corporation shall be managed by or under the direction of a Board of Directors, who may exercise all of the powers of the corporation except as otherwise provided by law or the Certificate of Incorporation.

2.2 Number, Election and Qualification. Subject to the rights of holders of any series of Preferred Stock to elect directors, the number of directors of the Corporation shall be established from time to time by the Board of Directors. Election of directors need not be by written ballot. Directors need not be stockholders of the corporation.

2.3 Classes of Directors. Subject to the rights of holders of any series of Preferred Stock to elect directors, the Board of Directors shall be and is divided into three classes: Class I, Class II and Class III.

2.4     Terms of Office. Subject to the rights of holders of any series of Preferred Stock to elect directors, each director shall serve for a term ending on the date of the third annual meeting following the annual meeting at which such director was elected; *provided*, that each director initially appointed to Class I shall serve for a term expiring at the corporation's annual meeting of stockholders held in 2006; each director initially appointed to Class II shall serve for a term expiring at the corporation's annual meeting of stockholders held in 2007; and each director initially appointed to Class III shall serve for a term expiring at the corporation's annual meeting of stockholders held in 2008; *provided, further*, that the term of each director shall continue until the election and qualification of a successor and be subject to such director's earlier death, resignation or removal.

2.5     Quorum. A majority of the directors at any time in office shall constitute a quorum for the transaction of business. If at any meeting of the Board of Directors there shall be less than such a quorum, a majority of the directors present may adjourn the meeting from time to time without further notice other than announcement at the meeting, until a quorum shall be present.

2.6     Action at Meeting. Every act or decision done or made by a majority of the directors present at a meeting duly held at which a quorum is present shall be regarded as the act of the Board of Directors unless a greater number is required by law or by the Certificate of Incorporation.

2.7     Removal. Subject to the rights of holder of any series of Preferred Stock, directors of the corporation may be removed only for cause and only by the affirmative vote of the holders of at least seventy-five percent (75%) of the votes which all the stockholders would be entitled to cast in any annual election of directors or class of directors.

2.8     Vacancies. Subject to the rights of holder of any series of Preferred Stock, any vacancy or newly-created directorships in the Board of Directors, however occurring shall be filled only by vote of a majority of the directors then in office, although less than a quorum, or by a sole remaining director and shall not be filled by the stockholders. A director elected to fill a vacancy shall hold office until the next election of the class for which such director shall have been chosen, subject to the election and qualification of a successor and to such director's earlier death, resignation or removal.

2.9     Resignation. Any director may resign by delivering a resignation in writing or by electronic transmission to the corporation at its principal office or to the Chairman of the Board, the Chief Executive Officer or the Secretary. Such resignation shall be effective upon receipt unless it is specified to be effective at some later time or upon the happening of some later event.

2.10    Regular Meetings. Regular meetings of the Board of Directors may be held without notice at such time and place as shall be determined from time to time by the Board of Directors; *provided*, that any director who is absent when such a determination is made shall be given notice of the determination. A regular meeting of the Board of Directors may be held without notice immediately after and at the same place as the annual meeting of stockholders.

2.11     Special Meetings. Special meetings of the Board of Directors may be held at any time and place designated in a call by the Chairman of the Board, the Chief Executive Officer, two or more directors, or by one director in the event that there is only a single director in office.

2.12     Notice of Special Meetings. Notice of any special meeting of directors shall be given to each director by the Secretary or by the officer or one of the directors calling the meeting. Notice shall be duly given to each director (i) in person or by telephone or electronic mail at least 24 hours in advance of the meeting, (ii) by sending a telegram or telecopy or delivering written notice by hand, to such director's last known business or home address at least 48 hours in advance of the meeting, or (iii) by sending written notice, via first-class mail or reputable overnight courier, to such director's last known business or home address at least 72 hours in advance of the meeting. A notice or waiver of notice of a meeting of the Board of Directors need not specify the purposes of the meeting.

2.13     Meetings by Conference Communications Equipment. Directors may participate in meetings of the Board of Directors or any committee thereof by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation by such means shall constitute presence in person at such meeting.

2.14     Action by Consent. Any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if all members of the Board of Directors or committee, as the case may be, consent to the action in writing or by electronic transmission, and the written consents or electronic transmissions are filed with the minutes of proceedings of the Board of Directors or committee.

2.15     Committees. The Board of Directors may designate one or more committees, each committee to consist of one or more of the directors of the corporation. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members of the committee present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board of Directors and subject to the provisions of law, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the corporation and may authorize the seal of the corporation to be affixed to all papers which may require it. Each such committee shall keep minutes and make such reports as the Board of Directors may from time to time request. Except as the Board of Directors may otherwise determine, any committee may make rules for the conduct of its business, but unless otherwise provided by the directors or in such rules, its business shall be conducted as nearly as possible in the same manner as is provided in these Bylaws for the Board of Directors.

2.16     Compensation of Directors. Directors may be paid such compensation for their services and such reimbursement for expenses of attendance at meetings as the Board of Directors may from time to time determine. No such payment shall preclude any director from

serving the corporation or any of its parent or subsidiary corporations in any other capacity and receiving compensation for such service.

## **ARTICLE III**

### **OFFICERS**

3.1     **Titles**. The officers of the corporation shall consist of a Chief Executive Officer, a President, a Secretary, a Treasurer and such other officers with such other titles as the Board of Directors may from time to time determine, including a Chairman of the Board, a Vice Chairman of the Board, and one or more Vice Presidents, Assistant Treasurers, and Assistant Secretaries. The Board of Directors may appoint such other officers as it may deem appropriate.

3.2     **Election**. The Chief Executive Officer, President, Treasurer and Secretary shall be elected annually by the Board of Directors at its first meeting following the annual meeting of stockholders. Other officers may be appointed by the Board of Directors at such meeting or at any other meeting.

3.3     **Qualification**. No officer need be a stockholder. Any two or more offices may be held by the same person.

3.4     **Tenure**. Except as otherwise provided by law, by the Certificate of Incorporation or by these Bylaws, each officer shall hold office until such officer's successor is elected and qualified, unless a different term is specified in the resolution electing or appointing such officer, or until such officer's earlier death, resignation or removal.

3.5     **Resignation and Removal**. Any officer may resign by delivering a written resignation to the corporation at its principal office or to the Chief Executive Officer or the Secretary. Such resignation shall be effective upon receipt unless it is specified to be effective at some later time or upon the happening of some later event.

Any officer may be removed at any time, with or without cause, by vote of a majority of the entire number of directors then in office.

Except as the Board of Directors may otherwise determine, no officer who resigns or is removed shall have any right to any compensation as an officer for any period following such officer's resignation or removal, or any right to damages on account of such removal, whether such officer's compensation be by the month or by the year or otherwise, unless such compensation is expressly provided in a duly authorized written agreement with the corporation.

3.6     **Vacancies**. The Board of Directors may fill any vacancy occurring in any office for any reason and may, in its discretion, leave unfilled for such period as it may determine any offices other than those of Chief Executive Officer, Treasurer and Secretary. Each such successor shall hold office for the unexpired term of such officer's predecessor and until a successor is elected and qualified, or until such officer's earlier death, resignation or removal.

3.7     **Chairman of the Board**. The Board of Directors may appoint from its members a Chairman of the Board, who need not be an employee or officer of the corporation. If the Board

of Directors appoints a Chairman of the Board, such Chairman shall perform such duties and possess such powers as are assigned by the Board of Directors and, if the Chairman of the Board is also designated as the corporation's Chief Executive Officer, shall have the powers and duties of the Chief Executive Officer prescribed in Section 3.8 of these Bylaws. Unless otherwise provided by the Board of Directors, the Chairman of the Board shall preside at all meetings of the Board of Directors and stockholders.

3.8     Chief Executive Officer. The Chief Executive Officer shall have general charge and supervision of the business of the Corporation subject to the direction of the Board of Directors.

3.9     President. The President shall perform such other duties and shall have such other powers as the Board of Directors and the Chief Executive Officer (if the Chairman of the Board or another person is serving in such position) may from time to time prescribe.

3.10    Vice Presidents. Any Vice President shall perform such duties and possess such powers as the Board of Directors or the Chief Executive Officer may from time to time prescribe. In the event of the absence, inability or refusal to act of the Chief Executive Officer or the President, the Vice President (or if there shall be more than one, the Vice Presidents in the order determined by the Board of Directors) shall perform the duties of the Chief Executive Officer and when so performing shall have all the powers of and be subject to all the restrictions upon the Chief Executive Officer. The Board of Directors may assign to any Vice President the title of Executive Vice President, Senior Vice President or any other title selected by the Board of Directors.

3.11    Secretary and Assistant Secretaries. The Secretary shall perform such duties and shall have such powers as the Board of Directors or the Chief Executive Officer may from time to time prescribe. In addition, the Secretary shall perform such duties and have such powers as are incident to the office of the secretary, including without limitation the duty and power to give notices of all meetings of stockholders and special meetings of the Board of Directors, to attend all meetings of stockholders and the Board of Directors and keep a record of the proceedings, to maintain a stock ledger and prepare lists of stockholders and their addresses as required, to be custodian of corporate records and the corporate seal and to affix and attest to the same on documents.

Any Assistant Secretary shall perform such duties and possess such powers as the Board of Directors, the Chief Executive Officer or the Secretary may from time to time prescribe. In the event of the absence, inability or refusal to act of the Secretary, the Assistant Secretary (or if there shall be more than one, the Assistant Secretaries in the order determined by the Board of Directors) shall perform the duties and exercise the powers of the Secretary.

In the absence of the Secretary or any Assistant Secretary at any meeting of stockholders or directors, the chairman of the meeting shall designate a temporary secretary to keep a record of the meeting.

3.12    Treasurer and Assistant Treasurers. The Treasurer shall perform such duties and shall have such powers as may from time to time be assigned by the Board of Directors or the

Chief Executive Officer. In addition, the Treasurer shall perform such duties and have such powers as are incident to the office of treasurer, including without limitation the duty and power to keep and be responsible for all funds and securities of the corporation, to deposit funds of the corporation in depositories selected in accordance with these Bylaws, to disburse such funds as ordered by the Board of Directors, to make proper accounts of such funds, and to render as required by the Board of Directors statements of all such transactions and of the financial condition of the corporation.

The Assistant Treasurers shall perform such duties and possess such powers as the Board of Directors, the Chief Executive Officer or the Treasurer may from time to time prescribe. In the event of the absence, inability or refusal to act of the Treasurer, the Assistant Treasurer (or if there shall be more than one, the Assistant Treasurers in the order determined by the Board of Directors) shall perform the duties and exercise the powers of the Treasurer.

3.13     Salaries. Officers of the corporation shall be entitled to such salaries, compensation or reimbursement as shall be fixed or allowed from time to time by the Board of Directors.

## ARTICLE IV

### CAPITAL STOCK

4.1     Issuance of Stock. Unless otherwise voted by the stockholders and subject to the provisions of the Certificate of Incorporation, the whole or any part of any unissued balance of the authorized capital stock of the corporation or the whole or any part of any shares of the authorized capital stock of the corporation held in the corporation's treasury may be issued, sold, transferred or otherwise disposed of by vote of the Board of Directors in such manner, for such lawful consideration and on such terms as the Board of Directors may determine.

4.2     Certificates of Stock. Every holder of stock of the corporation shall be entitled to have a certificate, in such form as may be prescribed by law and by the Board of Directors, certifying the number and class of shares owned by such holder in the corporation. Each such certificate shall be signed by, or in the name of the corporation by, the Chairman or Vice Chairman, if any, of the Board of Directors, or the President or a Vice President, and the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary of the corporation. Any or all of the signatures on the certificate may be a facsimile.

Each certificate for shares of stock which are subject to any restriction on transfer pursuant to the Certificate of Incorporation, these Bylaws, applicable securities laws or any agreement among any number of stockholders or among such holders and the corporation shall have conspicuously noted on the face or back of the certificate either the full text of the restriction or a statement of the existence of such restriction.

There shall be set forth on the face or back of each certificate representing shares of such class or series of stock of the corporation a statement that the corporation will furnish without charge to each stockholder who so requests a copy of the full text of the powers, designations,

preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

4.3     Transfers. Except as otherwise established by rules and regulations adopted by the Board of Directors, and subject to applicable law, shares of stock may be transferred on the books of the corporation by the surrender to the corporation or its transfer agent of the certificate representing such shares properly endorsed or accompanied by a written assignment or power of attorney properly executed, and with such proof of authority or the authenticity of signature as the corporation or its transfer agent may reasonably require. Except as may be otherwise required by law, by the Certificate of Incorporation or by these Bylaws, the corporation shall be entitled to treat the record holder of stock as shown on its books as the owner of such stock for all purposes, including the payment of dividends and the right to vote with respect to such stock, regardless of any transfer, pledge or other disposition of such stock until the shares have been transferred on the books of the corporation in accordance with the requirements of these Bylaws.

4.4     Lost, Stolen or Destroyed Certificates. The corporation may issue a new certificate of stock in place of any previously issued certificate alleged to have been lost, stolen, or destroyed, upon such terms and conditions as the Board of Directors may prescribe, including the presentation of reasonable evidence of such loss, theft or destruction and the giving of such indemnity as the Board of Directors may require for the protection of the corporation or any transfer agent or registrar.

4.5     Record Date. The Board of Directors may fix in advance a date as a record date for the determination of the stockholders entitled to notice of or to vote at any meeting of stockholders, or entitled to receive payment of any dividend or other distribution or allotment of any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action. Such record date shall not be more than 60 nor less than 10 days before the date of such meeting, nor more than 60 days prior to any other action to which such record date relates.

If no record date is fixed, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day before the day on which notice is given, or, if notice is waived, at the close of business on the day before the day on which the meeting is held. If no record date is fixed, the record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating to such purpose.

A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

## ARTICLE V

### GENERAL PROVISIONS

5.1 Fiscal Year. Except as from time to time otherwise designated by the Board of Directors, the fiscal year of the corporation shall begin on the first day of January of each year and end on the last day of December in each year.

5.2 Corporate Seal. The corporate seal shall be in such form as shall be approved by the Board of Directors.

5.3 Waiver of Notice. Whenever notice is required to be given by law, by the Certificate of Incorporation or by these Bylaws, a written waiver signed by the person entitled to notice, or a waiver by electronic transmission by the person entitled to notice, whether before, at or after the time stated in such notice, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

5.4 Voting of Securities. Except as the Board of Directors may otherwise designate, the Chief Executive Officer or the Treasurer may waive notice of, and act as, or appoint any person or persons to act as, proxy or attorney-in-fact for this corporation (with or without power of substitution) at any meeting of stockholders or shareholders of any other corporation or organization, the securities of which may be held by this corporation.

5.5 Evidence of Authority. A certificate by the Secretary, or an Assistant Secretary, or a temporary Secretary, as to any action taken by the stockholders, directors, a committee or any officer or representative of the corporation shall as to all persons who rely on the certificate in good faith be conclusive evidence of such action.

5.6 Certificate of Incorporation. All references in these Bylaws to the Certificate of Incorporation shall be deemed to refer to the Certificate of Incorporation of the corporation, as amended and in effect from time to time.

5.7 Severability. Any determination that any provision of these Bylaws is for any reason inapplicable, illegal or ineffective shall not affect or invalidate any other provision of these Bylaws.

5.8 Pronouns. All pronouns used in these Bylaws shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identity of the person or persons may require.

## ARTICLE VI

### AMENDMENTS

These Bylaws may be altered, amended or repealed, in whole or in part, or new Bylaws may be adopted by the Board of Directors or by the stockholders as provided in the Certificate of Incorporation.

Number  
AT

Shares



INCORPORATED UNDER THE LAWS  
OF THE STATE OF DELAWARE

CUSIP 00484M 10 6  
SEE REVERSE FOR CERTAIN  
DEFINITIONS

This certifies that

is the owner of

FULLY PAID AND NON-ASSESSABLE SHARES OF THE  
COMMON STOCK, PAR VALUE \$.001 PER SHARE, OF

**Acorda Therapeutics, Inc.**

(hereinafter the "Corporation"), transferable on the books of the Corporation by the holder hereof in person or by duly authorized attorney upon surrender of this certificate properly endorsed. This certificate is not valid until countersigned and registered by the Transfer Agent and Registrar.

WITNESS the facsimile seal of the Corporation and the facsimile signatures of its duly authorized officers.

Dated:



PRESIDENT AND CHIEF  
EXECUTIVE OFFICER

[SEAL]



SECRETARY

COUNTERSIGNED AND REGISTERED:

**AMERICAN STOCK TRANSFER & TRUST COMPANY**

(NEW YORK, NEW YORK)

TRANSFER AGENT  
AND REGISTRAR

BY

  
AUTHORIZED  
SIGNATURE

---

## ACORDA THERAPEUTICS, INC.

The Corporation will furnish without charge to each stockholder who so requests a statement of the powers, designations, preferences, and relative, participating, optional or other special rights of each class of stock or series thereof of the Corporation, and the qualifications, limitations or restrictions of such preferences and/or rights.

The following abbreviations, when used in the inscription on the face of this certificate, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM	— as tenants in common	UNIF GIFT MIN ACT—	Custodian	
TEN ENT	— as tenants by the entireties		(Cust)	(Minor)
JT TEN	— as joint tenants with right of survivorship and not as tenants in common		under Uniform Gifts to Minors Act	
				(State)

Additional abbreviations may also be used though not in the above list.

**Important Notice:** When you sign your name to this Assignment Form without filling in the name of your "Assignee" or "Attorney", this stock certificate becomes fully negotiable, similar to a check endorsed in blank. Therefore, to safeguard a signed certificate, it is recommended that you either (i) fill in the name of the new owner in the "Assignee" blank, or (ii) if you are sending the signed certificate to your bank or broker, fill in the name of the bank or broker in the "Attorney" blank. Alternatively, instead of using the Assignment Form, you may sign a separate "stock power" form and then mail the unsigned stock certificate and the signed "stock power" in separate envelopes. For added protection, use certified or registered mail for a stock certificate.

For value received, hereby sell, assign and transfer unto

PLEASE INSERT SOCIAL  
SECURITY OR OTHER  
IDENTIFYING NUMBER OF  
ASSESSOR

---

---

Please print or typewrite name and address, including postal zip code, of assignee

---

---

Shares of the Common Stock  
represented by the within Certificate, and do hereby irrevocably constitute and appoint

Attorney to transfer the said stock on the books of the within-named Corporation with full power of substitution  
in the premises.

Dated \_\_\_\_\_

---

**NOTICE: The signature to this assignment must correspond with the name as written upon the face of the Certificate, in  
every particular, without alteration or enlargement, or any change whatever.**

Signature(s) Guaranteed:

---

THE SIGNATURE(S) SHOULD BE GUARANTEED BY AN ELIGIBLE GUARANTOR INSTITUTION  
(BANKS, STOCKBROKERS, SAVINGS AND LOAN ASSOCIATIONS AND CREDIT UNIONS WITH  
MEMBERSHIP IN AN APPROVED SIGNATURE GUARANTEE MEDALLION PROGRAM), PURSUANT  
TO S.E.C. RULE 17Ad-15

---

**Exhibit 4.2**

THESE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT").  
THEY MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED, OR HYPOTHECATED IN THE ABSENCE OF AN EFFECTIVE  
REGISTRATION STATEMENT AS TO THE SECURITIES UNDER THE ACT OR AN OPINION OF COUNSEL, REASONABLY  
SATISFACTORY TO THE COMPANY, THAT SUCH REGISTRATION IS NOT REQUIRED.

THESE SECURITIES ARE SUBJECT TO CERTAIN RESTRICTIONS ON TRANSFER AND RIGHTS OF FIRST REFUSAL AS SET FORTH IN AN AGREEMENT BETWEEN THE COMPANY AND THE WARRANTHOLDER, A COPY OF WHICH IS ON FILE WITH THE SECRETARY OF THE COMPANY.

**SECOND CLOSING WARRANT**

To Purchase Shares of the Series B Preferred Stock of

**ACORDA THERAPEUTICS, INC.**

Warrant B-2

Void after \_\_\_\_\_, 20\_\_\_\_\_  
[Five years after issuance]

**1. GRANT OF THE RIGHT TO PURCHASE SERIES B PREFERRED STOCK.**

For value received, Acorda Therapeutics, Inc., a Delaware corporation (the "Company") hereby grants to Elan International Services, Ltd., a Bermuda corporation (the "Warrantholder"), and the Warrantholder is entitled, upon the terms and subject to the conditions hereinafter set forth, to subscribe for and purchase from the Company up to 100,000 fully paid and nonassessable shares of the Company's Series B Preferred Stock (the "Series B Preferred"). The exercise price will be equal to U.S. \$2.00 per share of Series B Preferred (the "Exercise Price"). The number and Exercise Price of such shares are subject to adjustment as provided in Section 8 hereof.

For purposes of this Warrant, "Series B Preferred" shall be deemed to include the Common Stock of the Company upon the automatic conversion of all of the outstanding Preferred Stock of the Company in accordance with the provisions of the Company's Certificate of Incorporation.

**2. TERM OF THE WARRANT.**

Except as otherwise provided herein, the term of this Warrant and the right to purchase the Series B Preferred as granted herein will commence on the Second Closing Date, as such term is defined in that certain Preferred Stock, Convertible Note and Warrant Purchase Agreement dated as of January 22, 1997 between the Company and the Warrantholder (the "Purchase Agreement"), and will expire at 11:59 p.m. on the fifth anniversary of the Second Closing Date.

---

3. EXERCISE OF PURCHASE RIGHTS.

The purchase rights set forth in this Warrant are exercisable by the Warrantholder, in whole or in part, at any time, or from time to time, prior to the expiration of the term set forth in Section 2 above, by tendering to the Company at its principal office a notice of exercise (the "Notice of Exercise"), duly completed and executed. Upon receipt of the Notice of Exercise and the payment of the purchase price in accordance with the terms set forth below, the Company will issue to the Warrantholder a certificate for the number of shares of the Series B Preferred purchased and will execute the Notice of Exercise indicating the number of shares that remain subject to future purchases, if any.

The Warrantholder may exercise all or any portion of the outstanding warrants by paying to the Company, by cash or check, an amount equal to the aggregate Exercise Price of the shares being purchased.

4. RESERVATION OF SHARES.

During the term of this Warrant, the Company will at all times have authorized and reserved a sufficient number of shares of its Series B Preferred to provide for the exercise of the rights to purchase Series B Preferred as provided for herein and will have authorized and reserved a sufficient number of shares of the Company's Common Stock for issuance upon conversion of the Series B Preferred issuable upon exercise of this Warrant.

5. NO FRACTIONAL SHARES OR SCRIP.

No fractional share or scrip representing fractional shares will be issued upon the exercise of the Warrantholder's right to purchase the Series B Preferred, but in lieu of such fractional shares, the Company will make a cash payment therefor upon the basis of the Exercise Price then in effect.

6. NO RIGHTS AS STOCKHOLDER.

This Warrant does not entitle the Warrantholder to any voting right, dividend right or other rights as a stockholder of the Company prior to the exercise of the Warrantholder's rights to purchase Series B Preferred as provided for herein.

7. WARRANTHOLDER REGISTRY.

The Company will maintain a registry showing the name and address of the registered holder of this Warrant. This Warrant may be surrendered for exchange, transfer or exercise, in accordance with its terms, at the principal offices of the Company, and the Company shall be entitled to rely in all respects, prior to written notice to the contrary, upon such registry.

8. ADJUSTMENT RIGHTS.

The Exercise Price and the number of shares of Series B Preferred purchasable hereunder shall be subject to adjustment from time to time in accordance with the following provisions:

(a) In case the Company shall at any time subdivide the outstanding shares of its Series B Preferred, the Exercise Price in effect immediately prior to such subdivision shall be proportionately decreased, and in case the Company shall at any time combine the outstanding shares of its Series B Preferred, the Exercise Price in effect immediately prior to such combination shall be proportionately increased, effective at the close of business on the date of such subdivision or combination, as the case may be. Upon each adjustment pursuant to this Section 8(a), the Warrantholder shall thereafter (until another such adjustment) be entitled to purchase shares of the Series B Preferred at the adjusted Exercise Price.

(b) If at any time after the date of grant of this Warrant the Company shall take any action that results in an adjustment to the conversion ratio of the Series B Preferred under the Company's Amended and Restated Certificate of Incorporation, upon exercise of this Warrant the shares of Series B Preferred issued hereunder shall be entitled to the full benefit of such conversion ratio adjustment as if such shares had been issued and outstanding as of the date of such adjustment.

(c) If at any time while this Warrant is outstanding there shall be any reorganization or reclassification of the capital stock of the Company (other than a subdivision or combination of shares provided for in Section 8(a) above), or any consolidation or merger of the Company with another corporation, the Warrantholder shall thereafter be entitled to receive, during the term hereof and upon payment of the Exercise Price, the number of shares of stock or other securities or property of the Company or of the successor corporation resulting from such consolidation or merger, as the case may be, to which a holder of the Series B Preferred, deliverable upon the exercise of this Warrant, would have been entitled upon such reorganization, reclassification, consolidation or merger if this Warrant had been exercised, immediately prior to such reorganization, reclassification, consolidation or merger; and in any such case, appropriate adjustment (as reasonably determined in good faith by the Board of Directors of the Company) shall be made in the application of the provisions herein set forth with respect to the rights and interest thereafter of the Warrantholder to the end that the provisions set forth herein (including the adjustment of the Exercise Price and the number of shares issuable upon the exercise of this Warrant) shall thereafter be applicable as near as reasonably may be, in relation to any shares or other property thereafter deliverable upon the exercise hereof.

9. NOTICE OF ADJUSTMENTS.

Upon any adjustment of the Exercise Price and any increase or decrease in the number of shares of Series B Preferred purchasable upon the exercise of this Warrant, then, and in each such case, the Company, within fifteen (15) days thereafter, shall give written notice thereof to the Warrantholder at the address of the Warrantholder as shown on the books of the Company which notice shall state the Exercise Price as adjusted and the increased or decreased number of shares purchasable upon the exercise of this Warrant, setting forth in reasonable detail the method of calculation of each.

10. TRANSFERS.

This Warrant may not be transferred or assigned by the Warrantholder without the prior written consent of the Company; provided, however, that no consent of the Company shall

be required for any transfer or assignment of this Warrant to an affiliate (within the meaning of the Securities Act of 1933, as amended) of the Holder. Any transfer of this Warrant must comply with the requirements of this Section 10, and any assignee or transferee of this Warrant ("permitted assignee") shall be required to accept this Warrant subject to all rights and obligations of the Warrantholder as set forth herein.

Any securities to be issued upon exercise of this Warrant may not be sold, assigned, transferred, or otherwise disposed of unless the securities are registered under the Act or unless the person seeking to effect such disposition shall have requested and the Company shall have received an opinion of the Company's counsel that the proposed disposition may be effected without registration of such securities under the Act or any applicable state securities laws; provided, however, that any transfers to affiliates of the Warrantholder shall not require such an opinion of the Company's counsel. Unless a registration statement with respect to such shares of Series B Preferred is effective at the time, any shares of Series B Preferred issued upon the exercise of this Warrant shall bear the following legend:

"THESE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"). THEY MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED OR HYPOTHECATED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT IN EFFECT WITH RESPECT TO THE SECURITIES UNDER THE ACT OR AN OPINION OF COUNSEL, REASONABLY SATISFACTORY TO THE COMPANY, THAT SUCH REGISTRATION IS NOT REQUIRED."

11. MARKET STANDOFF AGREEMENT.

The Warrantholder agrees in connection with a public offering of the Company's securities, upon request of the Company or the underwriters managing any underwritten offering of the Company's securities, not to sell, make any short sale of, loan, grant any option for the purchase of, or otherwise dispose of this Warrant, of the shares of Series B Preferred issuable upon exercise hereof, or the shares of Common Stock issuable upon conversion thereof, other than to affiliates of the Warrantholder who shall agree to be similarly bound, without the prior written consent of the Company or such underwriters, as the case may be, for such period of time (not to exceed, in the case of the Company's initial public offering, one hundred eighty (180) days) from the effective date of such registration as may be requested by the underwriters; provided, however, that the officers and directors of the Company who own stock of the Company and a majority-in-interest of the Company's Series A Preferred Stock shall also agree to such restrictions.

12. MISCELLANEOUS.

(a) Effective Date. The provisions of this Warrant will be construed and will be given effect in all respects as if it had been executed and delivered by the Company on the date hereof. This Warrant will be binding upon any successors or assigns of the Company.

(b) Loss, Theft, Destruction or Mutilation of Warrant. Upon receipt by the Company of evidence reasonably satisfactory to it of the loss, theft, destruction or mutilation of this Warrant, and in case of loss, theft or destruction, of indemnity or security reasonably satisfactory to it, and upon reimbursement to the Company of all reasonable expenses incidental

thereto, and upon surrender and cancellation of this Warrant, if mutilated, the Company will make and deliver a new Warrant of like tenor and dated as of such cancellation, in lieu of this Warrant.

(c) Saturdays, Sundays, Holidays etc. If the last or appointed day for the taking of any action or the expiration of any right required or granted herein shall be a Saturday or a Sunday or shall be a legal holiday, then such action may be taken or such right may be exercised on the next succeeding day not a Saturday or a Sunday or a legal holiday.

(d) Attorneys' Fees. In any litigation, arbitration, or court proceeding between the Company and the Warranholder relating hereto, the prevailing party will be entitled to attorneys' fees and expenses and all costs of proceedings incurred in enforcing this Warrant.

(e) Governing Law. This Warrant will be governed by and construed for all purposes under and in accordance with the laws of the State of Delaware as applied to agreements between Delaware residents entered and to be performed entirely within Delaware.

(f) Counterparts. This Warrant may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(g) Titles and Subtitles. The titles of the paragraphs and subparagraphs of this Warrant are for convenience and are not to be considered in construing this Warrant.

(h) Notices. Any notice required or permitted hereunder shall be given in writing and shall be deemed effectively given upon personal delivery or upon deposit in the United States mail, by registered or certified mail, addressed (i) to the Warranholder at the address set forth on the signature page hereof, (ii) to the Company at its principal executive offices, addressed to the attention of the President, or (iii) at such other address as any such party may subsequently designate by written notice to the other party.

(i) Survival. The representations, warranties, covenants and conditions of the respective parties contained herein or made pursuant to this Warrant shall survive the execution and delivery of this Warrant.

(j) Amendments. Any provision of this Warrant may be amended and the observance of any term of this Warrant may be waived only by a written instrument signed by the Company and by the Warranholder.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Warrant to be executed by its officers thereunto duly authorized.

Company:

ACORDA THERAPEUTICS, INC.  
a Delaware corporation

By: \_\_\_\_\_

Ron Cohen, M.D.  
President and Chief Executive Officer

Warrantholder:

ELAN INTERNATIONAL SERVICES, LTD.  
a Bermuda corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

---

### Exhibit 10.1

## ACORDA THERAPEUTICS, INC.

### 1999 EMPLOYEE STOCK OPTION PLAN

#### SECTION 1. PURPOSE

The purpose of the Acorda Therapeutics, Inc. 1999 Employee Stock Option Plan (the "Plan") is to provide an additional incentive to directors, key employees, independent contractors, agents and consultants of Acorda Therapeutics, Inc. (the "Company") and its subsidiaries, to aid in attracting and retaining directors, employees, independent contractors, agents and consultants of outstanding ability, and to align their interests with those of shareholders.

#### SECTION 2. DEFINITIONS

Unless the context clearly indicates otherwise, the following terms, when used in this Plan, shall have the meanings set forth in this Section 2.

(a) **"Board"** shall mean the Board of Directors of the Company.

(b) **"Change in Control".** A change in control of the Company shall be deemed to have occurred if, over the initial opposition of the then-incumbent Board (whether or not such Board ultimately acquiesces therein), (i) any person or group of persons shall acquire, directly or indirectly, stock of the Company having at least 25% of the combined voting power of the Company's then-outstanding securities, or (ii) any shareholder or group of shareholders shall elect a majority of the members of the Board in each case after the closing of the initial public offering of the Stock.

(c) **"Code"** shall mean the Internal Revenue Code of 1986 and the rules and regulations thereunder, as it or they may be amended from time to time.

(d) **"Committee"** shall mean the full Board, Compensation Committee of the Board or such other committee as may be designated by the Board. If less than the full Board, the Committee shall consist of two or more members of the Board who are not eligible to participate in the Plan, and who otherwise are "non-employee directors" under Rule 16b-3.

(e) **"Date of Exercise"** shall mean the earlier of the date on which written notice of exercise, together with payment in full, is received at the office of the Secretary of the Company or the date on which such notice and payment are mailed to the Secretary of the Company at its principal office by certified or registered mail.

(f) **"Director"** shall mean a member of the Board of Directors.

(g) **"Employee"** shall mean any employee or any officer of the Company or any of its Subsidiaries, or any other person, who is an independent contractor, agent or consultant of the Company or any of its Subsidiaries, and excluding any director of the Company who is not



otherwise an employee of the Company. For the purposes of any provision of this Plan relating to Incentive Stock Options, the term "Employee" shall be limited to mean any employee (as that term is defined under Code Section 3401(c)) or officer of the Company or any of its Subsidiaries, but not any person who is merely an independent contractor, agent or consultant of the Company or any of its subsidiaries.

(h)       **"Fair Market Value"** of the Stock means, for all purposes of the Plan unless otherwise provided (i) the mean between the high and low sales prices of the Stock as reported on the National Market System or Small Cap Market of the National Association of Securities Dealers, Inc., Automated Quotation System, or any similar system of automated dissemination of quotations of securities prices then in common use, if so quoted, or (ii) if not quoted as described in clause (i), the mean between the high bid and low asked quotations for the Stock as reported by a the National Quotation Bureau Incorporated or such other source as the Committee shall determine, or (iii) if the Stock is listed or admitted for trading on any national securities exchange, the mean between the high and low sales price, or the closing bid price if no sale occurred, of the Stock on the principal securities exchange on which the Stock is listed. In the event that the method for determining the Fair Market Value of the Stock provided for above shall either be not applicable or not be practical, in the opinion of the Committee, then the Fair Market Value shall be determined by such other reasonable method as the Committee, in its discretion, shall select and apply.

(i)       **"Grantee"** shall mean an Employee granted a Stock Option.

(j)       **"Granting Date"** shall mean the date on which the Committee authorizes the issuance of a Stock Option for a specified number of shares of Stock to a specified Employee.

(k)       **"Incentive Stock Option"** shall mean a Stock Option granted under the Plan which is properly qualified under the provisions of Section 422 of the Code.

(l)       **"Nonstatutory Stock Option"** shall mean a Stock Option granted within the Plan which is not an Incentive Stock Option or otherwise qualified under similar tax provisions.

(m)       **"Progressive Stock Options"** shall mean either Incentive Stock Options or Nonstatutory Stock Options granted pursuant to Section 5(j) of this Plan.

(n)       **"Rule 16b-3"** shall mean Rule 16b-3 promulgated by the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934, as amended, or any rule in replacement thereof.

(o)       **"Stock"** shall mean the Common Stock, par value \$0.001 per share, of the Company.

(p)       **"Stock Appreciation Right"** shall mean a right granted pursuant to the Plan to receive Stock, cash, or a combination thereof, upon the surrender of the right to purchase all or part of the shares of Stock covered by a Stock Option.

(q)       **"Stock Option"** shall mean an Incentive Stock Option or Nonstatutory Stock Option granted pursuant to the Plan to purchase shares of Stock.

(r)     **“Subsidiary”** shall mean any subsidiary corporation as defined in Section 424(f) of the Code.

### **SECTION 3.     SHARES OF STOCK SUBJECT TO THE PLAN**

Subject to adjustment pursuant to Section 9, 17,558,163 shares of Stock shall be reserved for issuance upon the exercise of Stock Options granted pursuant to this Plan. Shares delivered under the Plan may be authorized and unissued shares or issued shares held by the Company in its treasury. If any Stock Options expire or terminate without having been exercised, the shares of Stock covered by such Stock Option shall become available again for the grant of Stock Options hereunder. Similarly, if any Stock Options are surrendered for cash pursuant to the provisions of Section 7, the shares of Stock covered by such Stock Options shall also become available again for the grant of Stock Options hereunder. Shares of Stock covered by Stock Options surrendered for Stock pursuant to Section 7, however, shall not become available again for the grant of Stock Options hereunder.

### **SECTION 4.     ADMINISTRATION OF THE PLAN**

(a)     The Plan shall be administered by the Committee. Subject to the express provisions of the Plan, the Committee shall have authority to interpret the Plan, to prescribe, amend and rescind rules and regulations relating to it, to determine the terms and provisions of Stock Option grants, and to make all other determinations necessary or advisable for the administration of the Plan.

(b)     It is intended that the Plan and any transaction hereunder meet all of the requirements of Rule 16b-3 promulgated by the Securities and Exchange Commission, as such rule is currently in effect or as hereafter modified or amended, and all other applicable laws. If any provision of the Plan or any transaction would disqualify the Plan or such transaction under, or would not comply with, Rule 16b-3 or other applicable laws, such provision or transaction shall be construed or deemed amended to conform to Rule 16b-3 or such other applicable laws or otherwise shall be deemed to be null and void, in each case to the extent permitted by law and deemed advisable by the Committee.

(c)     Any controversy or claim arising out of or related to this Plan shall be determined unilaterally by and at the sole discretion of the Committee.

### **SECTION 5.     GRANTING OF STOCK OPTIONS**

(a)     Directors, key Employees, independent contractors, agents and consultants to the Company shall be eligible to receive Stock Options under the Plan. Only Employees shall be eligible to receive Incentive Stock Options under the Plan.

(b)     The option price of each share of Stock subject to an Incentive Stock Option shall be at least 100% of the Fair Market Value of a share of the Stock on the Granting Date.

(c)     The option price of each share of Stock subject to a Nonstatutory Stock Option shall be 100% of the Fair Market Value of a share of the Stock on the Granting Date, or such other price either greater than or less than the Fair Market Value (but in no event less than the

par value of the Stock) as the Committee shall determine appropriate to the purposes of the Plan and to the Company's total compensation program.

(d) The Committee shall determine and designate from time to time those persons who are to be granted Stock Options and whether the particular Stock Options are to be Incentive Stock Options or Nonstatutory Stock Options, and shall also specify the number of shares covered by and the option price per share of each Stock Option. Each Stock Option granted under the Plan shall be clearly identified as to its status as a Nonstatutory Stock Option or an Incentive Stock Option.

(e) The aggregate Fair Market Value (determined at the time the Stock Option is granted) of the Stock with respect to which Incentive Stock Options are exercisable for the first time by any individual during any calendar year (under all plans of the individual's employer corporation and its parent and subsidiary corporations) shall not exceed \$100,000.

(f) A Stock Option shall be exercisable during such period or periods and in such installments as shall be fixed by the Committee at the time the Stock Option is granted or in any amendment thereto; but each Stock Option shall expire not later than ten years from the Granting Date.

(g) The Committee shall have the authority to grant both transferable Stock Options and nontransferable Stock Options, and to amend outstanding nontransferable Stock Options to provide for transferability. Each nontransferable Stock Option intended to qualify under Rule 16b-3 or otherwise shall provide by its terms that it is not transferable otherwise than by will or the laws of descent and distribution or, except in the case of Incentive Stock Options, pursuant to a "qualified domestic relations order" as defined by the Code, and is exercisable, during the Grantee's lifetime, only by the Grantee. Each transferable Stock Option may provide for such limitations on transferability and exercisability as the Committee may designate at the time a Stock Option is granted or is otherwise amended to provide for transferability.

(h) Stock Options may be granted to an Employee or Director who has previously received Stock Options or other options whether such prior Stock Options or other options are still outstanding, have previously been exercised or surrendered in whole or in part, or are canceled in connection with the issuance of new Stock Options.

(i) Without in any way limiting the authority of the Committee to make grants of Stock Options under the Plan, and in order to induce persons to retain ownership of Stock, the Committee shall have the authority (but not the obligation) to include within any agreement reflecting a Stock Option a provision entitling the Grantee of such a Stock Option to a further Stock Option (a "Progressive Stock Option") in the event the Grantee exercises such Stock Option evidenced by such agreement, in whole or in part, by surrendering other shares of Stock in accordance with this Plan and the terms and conditions of such agreement. Any such Progressive Stock Option shall be for a number of shares of Stock equal to the number of surrendered shares, shall become exercisable no sooner than six months after the Granting Date of the Stock Option or such longer period as the Committee may establish, shall have an option price per share equal to one hundred percent (100%) of the Fair Market Value of a share of Stock

on the Granting Date of the Progressive Stock Option, and shall be subject to such other terms and conditions as the Committee may determine.

(j) Notwithstanding the foregoing, the option price of an Incentive Stock Option in the case of a Grantee who owns more than ten percent of the total combined voting power of all classes of stock of the Company or any of its Subsidiaries, will not be less than one-hundred-ten percent (110%) of the Fair Market Value of the Stock at the Granting date and in the case of such a Grantee, the Incentive Stock Option may be exercised no more than five years after the Granting Date.

## **SECTION 6. EXERCISE OF STOCK OPTIONS**

(a) Except as provided in Section 8, no Stock Option may be exercised at any time unless the Grantee is an Employee on the Date of Exercise and, in the case of holders of Incentive Stock Options, has been an Employee at all times during the period beginning on the Granting Date and ending on the day 3 months before the date of such exercise.

(b) The Grantee shall pay the option price in full on the Date of Exercise of a Stock Option in cash, by check, or by delivery of full shares of Stock of the Company, duly endorsed for transfer to the Company with signature guaranteed, by any combination thereof or by such other mode of payment as the Committee may approve, including payment through a broker in accordance with procedures permitted by rules and regulations of the Federal Reserve Board. Stock will be accepted at its Fair Market Value on the Date of Exercise.

(c) Subject to the approval of the Committee, or of such person to whom the Committee may delegate such authority ("its designee"), and subject further to the applicable regulations of any governmental authority, the Company may loan to the Grantee a sum equal to an amount which is not in excess of 100% of the purchase price of the shares of Stock acquired upon exercise of a Stock Option, such loan to be evidenced by the execution and delivery of a promissory note. Interest shall be paid on the unpaid balance of the promissory note at such times and at such rate as shall be determined by the Committee or its designee. Such promissory note shall be secured by the pledge to the Company of shares of Stock having an aggregate purchase price on the date of purchase equal to or greater than the amount of such note. A Grantee shall have, as to such pledged shares of Stock, all rights of ownership including the right to vote such shares of Stock and to receive dividends paid on such shares of Stock, subject to the security interest of the Company. Such shares of Stock shall not be released by the Company from the pledge unless the proportionate amount of the note secured thereby has been repaid to the Company; provided, however that shares of Stock subject to a pledge may be used to pay all or part of the purchase price of any other option granted hereunder or under any other stock incentive plan of the Company under the terms of which the purchase price of an option may be paid by the surrender of shares of Stock, subject to the terms and conditions of this Plan relating to the surrender of shares of Stock in payment of the exercise price of an option. In such event, that number of the newly purchased shares of Stock equal to the shares of Stock previously pledged shall be immediately pledged as substitute security for the pre-existing debt of the Grantee to the Company, and thereupon shall be subject to the provisions hereof relating to pledged shares of Stock. All notes executed hereunder shall be payable at such times and in such amounts and shall contain such other terms as shall be specified by the Committee or its designee

or stated in the option agreement; provided, however, that such terms shall conform to requirements contained in any applicable regulations which are issued by any governmental authority.

## **SECTION 7. STOCK APPRECIATION RIGHTS**

(a) The Committee may grant to any Employee, Stock Appreciation Rights in connection with any Stock Option. Stock Appreciation Rights may be granted at the time the related Stock Option is granted or at any time thereafter up to six months prior to the expiration of the related Stock Option.

(b) Stock Appreciation Rights shall be exercisable at such times and to the extent that the related Stock Option shall be exercisable and only to the extent the Stock Appreciation Right has a positive value, unless the Committee specifies a more restrictive period.

(c) Upon the exercise of a Stock Appreciation Right, the Grantee shall surrender the related Stock Option or a portion thereof and shall be entitled to receive payment of an amount determined by multiplying the number of shares as to which the Stock Option rights are surrendered by the difference obtained by subtracting the exercise price per share of the related Stock Option from the Fair Market Value of a share of Stock on the Date of Exercise of the Stock Appreciation Right.

(d) Payment of the amount determined under Section 7(c) shall be made in Stock, in cash, or partly in cash and partly in Stock as the Committee shall determine in its sole discretion.

(e) Except as provided in Section 10(b), the exercise of a Stock Appreciation Right for cash may be made only during the period beginning on the third business day following the release of quarterly or annual financial data and ending on the twelfth business day following such date.

## **SECTION 8. TERMINATION OF EMPLOYMENT**

Except as otherwise provided by the Committee at the time the Stock Option is granted or any amendment thereto, if a Grantee ceases to be an Employee then:

(a) if termination of employment is voluntary or involuntary without cause, the Grantee may exercise each Stock Option held by the Grantee within three months after such termination (but not after the expiration date of the Stock Option) to the extent of the number of shares subject to the Stock Option which are purchasable pursuant to its terms at the date of termination;

(b) if termination is for cause, all Stock Options held by the Grantee shall be canceled as of the date of termination;

(c) subject to the provisions of Section 8(d), if termination is (i) by reason of retirement at a time when the Grantee is entitled to the current receipt of benefits under any retirement plan maintained by the Company or any Subsidiary, or (ii) by reason of disability, each Stock Option held by the Grantee may be exercised by the Grantee at any time (but not after

the expiration date of the Stock Option) (within one year of termination in the case of Incentive Stock Options) to the extent of the number of shares subject to the Stock Option which were purchasable pursuant to its terms at the date of termination;

(d) if termination is by reason of the death of the Grantee, or if the Grantee dies after retirement or disability as referred to in Section 8(c), each Stock Option held by the Grantee may be exercised by the Grantee's estate, or by any person who acquires the right to exercise the Stock Option by reason of the Grantee's death, at any time within a period of three years after death (but not after the expiration date of the Stock Option) to the extent of the total number of shares subject to the Stock Option which were purchasable pursuant to its terms at the date of termination; or

(e) if the Grantee should die within three months after voluntary termination of employment or involuntary termination without cause, as contemplated in Section 8(a), each Stock Option held by the Grantee may be exercised by the Grantee's estate, or by any person who acquires the right to exercise by reason of the Grantee's death, at any time within a period of one year after death (but not after the expiration date of the Stock Option) to the extent of the number of shares subject to the Stock Option which were purchasable pursuant to its terms at the date of termination.

## **SECTION 9. ADJUSTMENTS**

In the event of any merger, consolidation, reorganization, recapitalization, stock dividend, stock split or other change in the corporate structure or capitalization affecting the Stock, there shall be an appropriate adjustment made by the Committee in the number and kind of shares that may be granted in the aggregate and to Grantees under the Plan, the number and kind of shares subject to each outstanding Stock Option and Stock Appreciation Right and the option prices.

## **SECTION 10. TENDER OFFER; CHANGE IN CONTROL**

(a) A Stock Option shall become immediately exercisable to the extent of the total number of shares subject to the Stock Option in the event of (i) a tender offer by a person or persons other than the Company for all or any part of the outstanding Stock if, upon consummation of the purchases contemplated, the offeror or offerors would own, beneficially or of record, an aggregate of more than 25% of the outstanding Stock, or (ii) a Change in Control of the Company.

(b) The Committee may authorize the payment of cash upon the exercise of a Stock Appreciation Right during a period (i) beginning on the date on which a tender offer as described in (a), above, is first published or sent or given to holders of Stock and ending on the date which is seven days after its termination or expiration, or (ii) beginning on the date on which a Change in Control of the Company occurs and ending on the twelfth business day following such date.

## **SECTION 11. GENERAL PROVISIONS**

(a) Each Stock Option shall be evidenced by a written instrument containing such terms and conditions, not inconsistent with this Plan, as the Committee shall approve.

(b) The granting of a Stock Option in any year shall not give the Grantee any right to similar grants in future years or any right to be retained in the employ of the Company or any Subsidiary or interfere in any way with the right of the Company or such Subsidiary to terminate an Employee's employment at any time.

(c) The Company shall have the right to deduct from any payment or distribution under the Plan any federal, state or local taxes of any kind required by law to be withheld with respect to such payments or to take such other action as may be necessary to satisfy all obligations for the payment of such taxes. In case distributions are made in shares of Stock, the Company shall have the right to retain the value of sufficient shares of Stock to equal the amount of tax to be withheld for such distributions or require a recipient to pay the Company for any such taxes required to be withheld on such terms and conditions prescribed by the Committee.

(d) No Grantee shall have any of the rights of a shareholder by reason of a Stock Option until it is exercised.

(e) This Plan shall be construed and enforced in accordance with the laws of the State of Delaware (without regard to the legislative or judicial conflict of laws rules of any state), except to the extent superseded by federal law.

## **SECTION 12. AMENDMENT AND TERMINATION**

(a) The Plan shall terminate on June 18, 2009 and no Stock Option shall be granted hereunder after that date, provided that the Board may terminate the Plan at any time prior thereto.

(b) The Board may amend the Plan at any time without notice, provided however, that the Board may not, without prior approval by the shareholders, (i) increase the maximum number of shares of Stock for which Stock Options may be granted (except as contemplated by the provisions of Section 9), (ii) materially increase the benefits accruing to participants under the Plan or (iii) materially modify the requirements as to eligibility for participation in the Plan.

(c) No termination or amendment of the Plan may, without the consent of a Grantee to whom a Stock Option shall theretofore have been granted, adversely affect the rights of such Grantee under such Stock Option.

## **SECTION 13. EFFECTIVE DATE**

The Plan shall become effective as of the date it is approved by the Company's stockholders.

## **Exhibit 10.2**

### **AMENDMENT TO 1999 EMPLOYEE STOCK OPTION PLAN**

This amendment (this "Amendment") dated as of February 24, 2004 amends the 1999 Employee Stock Option Plan (the "Stock Option Plan") of Acorda Therapeutics, Inc. (the "Company").

#### **W I T N E S S E T H:**

**WHEREAS**, the Company wishes to amend the terms of the Stock Option Plan to provide for the issuance of restricted stock in addition to stock options and stock appreciation rights;

**NOW, THEREFORE**, the Stock Option Plan is amended as follows:

1. Section 2. Definitions is hereby amended by adding the following definitions:

**"Award"** means any Stock Option, Stock Appreciation Right or Restricted Stock.

**"Participant"** shall mean a person selected by the Committee to receive an Award under the Plan.

**"Restricted Period"** shall mean the period of time selected by the Committee during which shares subject to a Restricted Stock Award may be repurchased by or forfeited to the Company.

**"Restricted Stock"** shall mean shares of Common Stock awarded to a Director or Employee under Section 14.

In addition, the definition of "Committee" is deleted in its entirety and replaced with the following:

**"Committee"** shall mean the full Board, Compensation Committee of the Board or such other committee as may be designated by the Board. If and when the Common Stock is registered under Section 12 of the Securities Exchange Act of 1934, as amended (the "Act"), to the extent necessary to comply with Rule 16b-3 under the Act with respect to Option grants to officers and directors, each

member of the Committee shall be a “non-employee director” within the meaning of Rule 16b-3 and, to the extent necessary to exclude Options granted under the Plan from the calculation of the income tax deduction limit under Section 162(m) of the Internal Revenue Code of 1986, as amended (the “Code”), each member of the Committee shall be an “outside director” within the meaning of Code Section 162(m). A majority of the Committee shall constitute a quorum, and acts of the majority of members present at any meeting at which a quorum is present shall be deemed the acts of the Committee. The Committee may also act by instrument signed by all members of the Committee.

2. The following new Section 14 is added:
-

## **SECTION 14. RESTRICTED STOCK**

(a) The Committee may grant Restricted Stock Awards entitling recipients to acquire shares of Stock, subject to the right of the Company to repurchase all or part of such shares at their purchase price or at another price specified in the Award (or to require forfeiture of such shares if purchased at no cost) from the recipient in the event that conditions specified by the Committee in the applicable Award are not satisfied prior to the end of the applicable Restricted Period or Restricted Periods established by the Committee for such Award. Conditions for repurchase (or forfeiture) may be based on continuing employment or service or achievement of pre-established performance or other goals and objectives.

(b) Shares of Restricted Stock may not be sold, assigned, transferred, pledged or otherwise encumbered, except as permitted by the Committee during the applicable Restricted Period. Shares of Restricted Stock shall be evidenced in such manner as the Committee may determine. Any certificates issued in respect of shares of Restricted Stock shall be registered in the name of the Participant and, unless otherwise determined by the Committee, deposited by the Participant, together with a stock power endorsed in blank, with the Company (or its designee). At the expiration of the Restricted Period, the Company (or such designee) shall deliver such certificates to the Participant or if the Participant has died, to the Participants' designated beneficiary.

(c) Restricted Stock shall be issued for no cash consideration or such minimum consideration as may be required by applicable law.

(d) The Committee may at any time accelerate the expiration of the Restricted Period applicable to all, or any particular, outstanding shares of Restricted Stock.

(e) A Restricted Stock Award is subject to adjustment on the same terms set forth under Section 9 of the Plan.

3. Section 4. Administration of the Plan is hereby amended by replacing the reference to "Stock Option" in subsection (a) with the term "Award."

4. Section 11. General Provisions is hereby amended by (i) replacing the reference to "Stock Option" in subsections (a) and (b) with the term "Award" and (ii) replacing the reference to "Grantee" in subsection (b) with the term "Participant."

5. Section 12. Amendment and Termination is hereby amended by (i) replacing all references to "Stock Option" and "Stock Options" with the term "Award" and "Awards" and (ii) replacing all references to "Grantee" with the term "Participant."

6. This Amendment shall be deemed effective immediately upon receipt of stockholder approval of its adoption.

---

## **Exhibit 10.3**

### **AMENDMENT NO. 2 TO 1999 EMPLOYEE STOCK OPTION PLAN**

This Amendment No. 2 (this "Amendment") dated as of September 18, 2005 amends the 1999 Employee Stock Option Plan, as previously amended as of February 24, 2004 (the "Stock Option Plan") of Acorda Therapeutics, Inc. (the "Company").

#### **WITNESSETH:**

**WHEREAS**, the Company wishes to amend the terms of the Stock Option Plan to increase the number of shares of common stock, \$0.001 par value, of the Company (the "Common Stock") subject thereto;

**NOW, THEREFORE**, the Stock Option Plan is amended as follows:

1. **SECTION 3. SHARES OF STOCK SUBJECT TO THE PLAN** be and hereby is deleted in its entirety and the following two paragraphs are inserted in lieu thereof:

"Subject to adjustment under Section 9 of the Plan, the number of shares of Common Stock reserved for issuance pursuant to Awards made under the Plan shall not exceed 4,136,414 shares of Stock. Shares delivered under the Plan may be authorized and unissued shares or issued shares held by the Company in its treasury. If any Awards expire or terminate without having been exercised, the shares of Stock covered by such Award shall become available again for the grant of Awards hereunder. Similarly, if any Awards are surrendered for cash pursuant to the provisions of Section 7, the shares of Stock covered by such Awards shall also become available again for the grant of Awards hereunder. Shares of Stock covered by Awards surrendered for Stock pursuant to Section 7, however, shall not become available again for the grant of Awards hereunder.

The total number of shares of Stock available for issuance under this Plan, including shares of Stock subject to then outstanding Awards, shall automatically increase on January 1 of each year during the term of this Plan, beginning January 1, 2006, by a number of

shares of Stock equal to 4% of the outstanding shares of Stock on that date, unless otherwise determined by the Board.”

2. Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Plan.
  3. This Amendment shall be deemed effective immediately upon receipt of stockholder approval of its adoption.
- 

**Exhibit 10.4**

**SIXTH AMENDED AND RESTATED  
REGISTRATION RIGHTS AGREEMENT**

This Sixth Amended and Restated Registration Rights Agreement (the “Agreement”) is made as of March 3, 2004, by and among Acorda Therapeutics, Inc., a Delaware corporation (the “Company”), and each of the persons and entities that are parties to the “Prior Agreement” (as hereafter defined), each of the “Purchasers” under the Series K Agreement that becomes a party hereto and each other person or entity that becomes a party hereto pursuant to the terms hereof (all such persons and entities are referred to herein as “Purchasers” and their names and addresses are set forth on the Schedule of Purchasers attached hereto as it may be amended from time to time).

Recitals

A. In connection with the issuance and sale of shares of its Preferred Stock, the Company has granted, and anticipates that it will continue to grant, registration and other rights to the purchasers of its Preferred Stock or other securities or obligations entitling the holder to acquire directly or indirectly Preferred Stock of the Company on a pari passu basis.

B. The Company desires to amend and restate the Fifth Amended and Restated Registration Rights Agreement dated as of May 8, 2003, between the Company and the “Purchasers” identified therein (the “Prior Agreement”) to effect certain changes to the rights and obligations of the parties herein in connection with the completion of an equity financing involving the sale of the Company’s Series K Preferred Stock pursuant to a Series K Preferred Stock Purchase Agreement dated as of the date hereof among the Company and the “Purchasers” identified therein (the “Series K Agreement”).

NOW THEREFORE, in consideration of the foregoing, the parties agree as follows:

1. Certain Definitions. As used in this Agreement, the following terms will have the following respective meanings:

“Act” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“Affiliate” of a Holder, as used in Section 2(a) and Section 13, includes, but is not limited to (a) a general or limited partner of a Holder, (b) a member of a Holder, (c) an officer, director or manager of a Holder, (d) an equity owner of a Holder, (e) if the Holder is a trust, a successor trust or the beneficiaries of the trust, (f) a company controlling, controlled by or under common control with the Holder, (g) a spouse, child, stepchild, parent, stepparent or sibling of a Holder, by way of gift, (h) a revocable trust for the benefit of the Holder or his immediate family via an inter vivos transfer and assignment.

“Commission” means the United States Securities and Exchange Commission or any other federal agency at the time administering the Act or the Exchange Act or the Exchange Act.

---

“Conversion Stock” means the shares of the Company’s Common Stock issuable or issued upon conversion or exercise of Preferred Stock.

“Convertible Securities” means securities or obligations of the Company entitling the holder to acquire directly or indirectly Preferred Stock pursuant to a stock purchase, warrant, convertible note or related-agreement.

“Exchange Act” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

“Holder” means the Purchasers holding Registrable Securities or securities convertible, exercisable or exchangeable into Registrable Securities and any person holding such securities to whom the rights under this Agreement have been transferred in accordance with Section 13 hereof.

“Initiating Holders” means any Holder or Holders who in the aggregate hold at least 60% of the Registrable Securities at the time of the relevant event if an initial public offering of Company securities registered under the Act has not taken place or 30% of the Registrable Securities at any other time.

“Notes” means any promissory notes issued by the Company that are convertible into or exchangeable for any series of the Preferred Stock or other equity securities of the Company.

“Preferred Stock” means, collectively, issued and outstanding shares of the Company’s Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E-1 Preferred Stock, Series E-2 Preferred Stock, Series F Preferred Stock, Series G Preferred Stock, Series H Preferred Stock, Series I Preferred Stock, Series J Preferred Stock, Series K Preferred Stock and Convertible Securities.

The terms “register,” “registered” and “registration” refer to a registration effected by preparing and filing a registration statement in compliance with the Act, and the declaration or ordering of the effectiveness of such registration statement.

“Registrable Securities” means (i) the Conversion Stock, (ii) any Common Stock of the Company issued or issuable with respect to the Conversion Stock upon any stock split, stock dividend, recapitalization, or similar event and (iii) any Common Stock delivered to the Holder as full or partial payment in respect of the Notes which are “restricted securities” within the meaning of Rule 144; provided, however, that shares of Common Stock or other securities shall no longer be treated as Registrable Securities after they have been sold to or through a broker or dealer or underwriter in a public distribution or a public securities transaction, whether in a registered offering, pursuant to Rule 144, or otherwise, if in connection with the sale the restrictive legends required pursuant to Section 2(a) have been removed; and provided, further, that if all Company securities of a Purchaser that would be Registrable Securities but for this provision can be sold without any volume or time restrictions under Rule 144(k) and if the Company removes the restrictive legends required by Section 2(a), then those Company securities shall no longer be Registrable Securities.

“Registration Expenses” means all expenses incurred by the Company in complying with Sections 5, 6, and 7 hereof, including, without limitation, all registration, qualification, and filing fees, printing expenses, escrow fees and disbursements of counsel for the Company, blue sky fees and expenses, all accounting fees, including the expense of any special audits incident to or required by such registration, and the reasonable fees and expenses of one counsel for the selling Holders not to exceed \$15,000 (but excluding the compensation of regular employees of the Company which shall be paid in any event by the Company). Registration Expenses will not include expenses of the holders of Registrable Securities to the extent limited or precluded by applicable blue sky laws. Registration Expenses will not include selling commissions, underwriting discounts, other compensation paid to underwriters or other agents or brokers to effect the sale, stock transfer taxes, or special counsel of any Holder or Holders except as provided in the first sentence of this paragraph.

“Restricted Securities” means the securities of the Company required to bear the legend set forth in Section 2 hereof.

“Warrants” means any warrants granted by the Company for the purchase of any series of the Preferred Stock.

2. Restrictive Legend. Each certificate representing (i) the Preferred Stock, (ii) the Warrants, (iii) the Conversion Stock, (iv) the Notes, and (v) any other securities issued in respect of the Preferred Stock, the Warrants, or the Conversion Stock or the Notes upon any stock split, stock dividend, recapitalization, merger, consolidation or similar event, shall (unless otherwise permitted by the provisions of Section 4 below) be stamped or otherwise imprinted with a legend in substantially the following form (in addition to any legend required under applicable securities laws of any state or foreign jurisdiction), as and if appropriate.

(a) “THESE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “ACT”). THEY MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED, OR HYPOTHECATED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT AS TO THE SECURITIES UNDER THE ACT OR, IF REASONABLY REQUESTED BY THE COMPANY, AN OPINION OF COUNSEL REASONABLY SATISFACTORY TO THE COMPANY, THAT SUCH REGISTRATION IS NOT REQUIRED.”

(b) “THESE SECURITIES ARE SUBJECT TO CERTAIN RESTRICTIONS ON TRANSFER AS SET FORTH IN AN AGREEMENT BETWEEN THE COMPANY AND THE STOCKHOLDER, A COPY OF WHICH IS ON FILE WITH THE SECRETARY OF THE COMPANY.”

(c) Each Holder consents to the Company’s making a notation on its records and giving instructions to any transfer agent of the Restricted Securities, in order to implement the restrictions on transfer established in this Agreement.

3. Notice of Proposed Transfers .

(a) Each Holder by acceptance of Restricted Securities agrees to comply in all respects with the provisions of this Section 3; provided, however, that the

restrictions on transfer as set forth herein shall be subject to any superseding agreement that may exist between the Holder and the Company. Prior to any proposed sale, assignment, transfer, or pledge of any Restricted Securities, unless either (i) there is in effect a registration statement under the Act covering the proposed transfer, or (ii) within a reasonable time after sale, assignment, transfer or pledge if made to an Affiliate of a Holder, the Holder thereof gives notice to the Company of such Holder's intention to effect such transfer, sale, assignment, or pledge (the "Transfer Notice"). The Transfer Notice shall describe the manner and circumstances of the proposed transfer, sale, assignment, or pledge in sufficient detail, including (i) the number or amount of the Restricted Securities to be sold or transferred, (ii) the price for which the Holder proposes to sell, transfer, or assign the Restricted Securities, and (iii) the name of the proposed purchaser or transferee. Except for a transfer of Restricted Securities by a Holder to one of its Affiliates, each such notice shall also be accompanied, if requested by the Company and at such Holder's expense, by a written opinion of legal counsel reasonably satisfactory to the Company, which opinion shall be addressed to the Company to the effect that the proposed transfer of the Restricted Securities may be effected without registration under the Act. The Company agrees that it will not require such opinions of counsel to the Holder for transfers made pursuant to Rule 144, except in unusual circumstances,

(b) Each certificate evidencing the Restricted Securities transferred as provided above (except sales pursuant to a registration statement under the Act) will bear, except if such transfer is made pursuant to Rule 144, the appropriate restrictive legends set forth in Section 2 above, except that such certificate shall not bear the restrictive legend set forth in Section 2(a) if in the opinion of counsel of such Holder and counsel for the Company such legend is not required in order to establish compliance with any provision of the Act.

4. Removal of Restrictions on Transfer Securities. Any legend referred to in Section 2(a) hereof stamped or imprinted on a certificate evidencing the Restricted Securities, and the stock transfer instructions and record notations with respect to such Restricted Securities will be removed and the Company will issue a certificate without such legend to the Holder of such Restricted Securities if (i) such Restricted Securities are registered under the Act or (ii) such Holder provides the Company with (a) an opinion of counsel (which may be counsel for the Company), reasonably satisfactory to the Company, to the effect that a public sale or transfer of such Restricted Securities may be made without registration under the Act or (b) assurances, which may, at the Company's reasonable discretion, include an opinion of counsel reasonably satisfactory to the Company, that such Restricted Securities can be sold pursuant to an exemption from registration under Section (k) of Rule 144 under the Act.

5. Requested Registration.

(a) Request for Registration. In the event the Company shall receive from Initiating Holders a request that the Company effect any registration, qualification, or compliance under the Act with respect to all or any portion of the Registrable Securities the Company will:

(i) within twenty days of the Company's receipt of such notice, give written notice of the proposed registration, qualification, or compliance to all other Holders; and

(ii) as soon as practicable, use its best efforts to effect such registration, qualification, or compliance (including without limitation, filing post effective amendments, appropriate qualification under applicable blue sky or other state securities laws and appropriate compliance with applicable registrations issued under the Act and any other governmental requirements or regulations) as may be so requested and as would permit or facilitate the sale and distribution of all or such portion of such Registrable Securities as are specified in such request, together with all or such portion of the Registrable Securities of any Holder or such Holders joining in such request as are specified in a written request received by the Company within 20 days after receipt of such written notice from the Company; provided, however, that the Company shall not be obligated to take any action to effect any such registration, qualification, or compliance pursuant to this Section 5:

(1) in any particular jurisdiction in which the Company would be required to execute a general consent to service of process in effecting such registration, qualification, or compliance unless the Company is already subject to service in such jurisdiction and except as may be required by the Act; or

(2) if the anticipated aggregate offering price of the Registrable Securities proposed to be registered could not be reasonably determined by the Initiating Holders at the time of their request for registration to be at least \$5 million; or

(3) prior to the earlier of (i) [March 1,2005] or (ii) the date six months immediately following the effective date of any registration statement pertaining to the initial public offering of securities of the Company (other than a registration of securities in a Rule 145 transaction or with respect to an employee benefit plan); or

(4) after the Company has effected three such registrations pursuant to this Section 5(a), and such registrations have been declared or ordered effective; or

(5) at any time during which the Company is qualified to use Form S-3 for registration of the Registrable Securities, provided the Company treats the Initiating Holders' request as a request for registration pursuant to Section 7 and promptly proceeds to effect such registration; or

(6) if the Company shall furnish to such Holders a certificate signed by the President of the Company stating that in the good faith judgment of the Board of Directors it would be seriously detrimental to the Company or its stockholders for a registration statement to be filed in the near future, whereby the Company's obligations to use its best efforts to register, qualify or comply under this Section 5(a) shall be deferred for a period of up to 120 days; provided, however, that the Company shall not exercise such right more than once in a twelve month period.

Subject to the foregoing clauses (1) through (6), the Company shall file a registration statement covering the Registrable Securities so requested to be registered as soon as reasonably practicable after receipt of the request or requests of the Initiating Holders.

(b) Underwriting. If the Initiating Holders intend to distribute the Registrable Securities covered by their request by means of an underwriting, they shall so advise the Company as part of their request made pursuant to Section 5, and the Company shall include such information in the written notice referred to in Section 5(a)(i) above. The right of any Holder to registration pursuant to Section 5 shall be conditioned upon such Holder's participation in the underwriting arrangements described by this Section 5(b), and the inclusion of such Holder's Registrable Securities in the underwriting (unless otherwise mutually agreed by a majority in interest of the Initiating Holders and such Holder with respect to such participation and inclusion) to the extent requested shall be limited to the extent provided herein. A Holder may elect to include in such underwriting all or any portion of the Registrable Securities he, she or it holds.

The Company shall (together with all Holders proposing to distribute their securities through such underwriting) enter into an underwriting agreement in customary form with a managing underwriter of recognized national standing selected for such underwriting by the Company and reasonably acceptable to a majority of the Holders proposing to distribute their securities through such underwriting. Notwithstanding any other provision of this Section 5, if the managing underwriter advises the Initiating Holders in writing that marketing factors require a limitation of the number of shares to be underwritten, then the Company will so advise all Holders of Registrable Securities, and the number of shares of Registrable Securities that may be included in the registration and underwriting shall be allocated among all such Holders thereof in proportion, as nearly as practicable, to the respective amounts of Registrable Securities held by such Holder; provided, however, that the number of shares of Registrable Securities to be included in such underwriting shall not be reduced unless all other securities are first entirely excluded from the underwriting. No Registrable Securities excluded from the underwriting by reason of the underwriter's marketing limitation shall be included in such registration. To facilitate the allocation of shares in accordance with the above provisions, the Company or the underwriters may round the number of shares allocated to any Holder to the nearest 100 shares.

If any Holder of Registrable Securities disapproves of the terms of the underwriting, such Holder may elect to withdraw therefrom by written notice to the Company, the managing underwriter and the Initiating Holders. The Registrable Securities and/or other securities so withdrawn shall also be withdrawn from registration; provided, however, that if by the withdrawal of such Registrable Securities a greater number of Registrable Securities held by other Holders may be included in such registration (up to the maximum of any limitation imposed by the underwriters), then the Company will offer to all other Holders who have included Registrable Securities in the registration the right to include additional Registrable Securities in the same proportion used in determining the underwriter limitation in this Section 5(b).

If the underwriter has not limited the number of Registrable Securities to be underwritten, the Company may include securities for its own account if the underwriter so agrees and if the number of Registrable Securities that would otherwise have been included in such registration and underwriting will not thereby be limited.

6. Company Registration.

(a) Notice of Registration. If at any time or from time to time, the Company shall determine to register any of its securities, either for its own account or the account of any holder of its securities, other than (i) a registration relating solely to employee benefit plans, (ii) a registration relating solely to a Commission Rule 145 transaction, (iii) a registration pursuant to Section 5 hereof, or (iv) a registration pursuant to Section 7 hereof, the Company will:

(i) Promptly give to each Holder written notice thereof; and

(ii) include in such registration (and any related qualification under blue sky laws or other compliance), and in any underwriting involved therein, all the Registrable Securities specified in a written request or requests, made within 20 days after receipt of such written notice from the Company, by any Holder. Such written request may seek the registration of all or any portion of a Holder's Registrable Securities.

(b) Underwriting. If the registration of which the Company gives notice is for a registered public offering involving an underwriting, the Company shall so advise the Holders as a part of the written notice pursuant to Section 6(a)(i). In such event, the right of any Holder to registration pursuant to this Section 6 shall be conditioned upon such Holder's participation in such underwriting and the inclusion of Holder's Registrable Securities in the underwriting to the extent provided herein. All Holders proposing to distribute their securities through such underwriting shall (together with the Company) enter into an underwriting agreement in customary form with the managing underwriter selected for such underwriting by the Company. Notwithstanding any other provision of this Section 6, if the managing underwriter determines that marketing factors require a limitation of the number of shares to be underwritten, the managing underwriter may (subject to the limitation set forth below) limit or exclude from such underwriting the Registrable Securities and other securities of the Holders to be distributed. If the Company is so advised by the managing underwriter, then all securities other than Registrable Securities and the securities proposed to be registered by the Company shall first be excluded from the registration. If additional securities must be eliminated as a consequence of the managing underwriter's determination, then the Company shall so advise all Holders distributing their Registrable Securities through such underwriting of such limitation or exclusion and, if applicable, the number of shares of Registrable Securities that the managing underwriter determines may be included in the registration and underwriting shall be allocated among all Holders of Registrable Securities in proportion, as nearly as practicable, to the respective amounts of Registrable Securities held by such Holders. Notwithstanding the foregoing, in no event shall the amount of securities of the selling Holders included in the offering be reduced below thirty percent (30%) of the total amount of securities included in such offering, unless such offering is the initial public offering of the Company's securities, in which case the selling Holders may be excluded entirely if the underwriters make the determination described above and no other stockholder's securities are included in such initial public offering. To facilitate the allocation of shares in accordance with the above provisions, the Company may round the number of shares allocated to any Holder or holder to the nearest 100 shares.

If any Holder of Registrable Securities disapproves of the terms of the underwriting, such Holder may elect to withdraw therefrom by written notice to the Company and the managing underwriter. If by the withdrawal of such Registrable Securities a greater number of Registrable Securities held by other Holders may be included in such registration (up to the maximum of any limitation imposed by the underwriters), then the Company will offer to all other Holders who have included Registrable Securities in the registration the right to include additional Registrable Securities in the same proportion used in determining the underwriter limitation in this Section 6(b).

(c) Right to Terminate Registration. The Company shall have the right to terminate or withdraw any registration by it under this Section 6 prior to the effectiveness of such registration whether or not any Holder has elected to include securities in such registration.

7. Registration on Form S-3 .

(a) Subject to the remainder of this Section 7, and unless Rule 144 is available for effecting a proposed transfer of all of the Registrable Securities of a Holder and such transfer would result in the removal of the restrictive legend required by Section 2(a) hereof, in the event that (i) the Company receives from any Holder or Holders a written request that the Company file a registration statement on Form S-3 (or any successor form to Form S-3), or any similar short form registration statement (collectively, "Form S-3"), for a public offering of Registrable Securities, the reasonably anticipated aggregate price to the public of which, net of underwriting discounts and commissions, would exceed \$2 million and (ii) the Company is a registrant entitled to use Form S-3 to register the Registrable Securities for such an offering, the Company will promptly give written notice of the proposed registration to all other Holders. As soon as reasonably practicable thereafter, the Company will use its diligent best efforts to cause all Registrable Securities to be registered as may be so requested for the offering on such form and as would permit or facilitate the sale and distribution of all or such portion of such Registrable Securities as are specified in such request, together with all or such portion of the Registrable Securities of any Holder or Holders joining in such request as are specified in a written request received by the Company within (20) days after receipt of such written notice from the Company. The provisions of Section 5(b) shall be applicable to each registration initiated under this Section 7.

(b) Notwithstanding the foregoing, the Company will not be obligated to take any action pursuant to this Section 7(a): (i) in any particular jurisdiction in which the Company would be required to execute a general consent to service of process in effectuating such registration, qualification, or compliance unless the Company is already subject to service in such jurisdiction and except as may be required by the Act; (ii) if the Company has previously effected two registrations pursuant to Section 7(a) whose effective dates were within the twelve month period whose last day is the date the Company receives the request; and (iii) if the Company shall furnish to such Holder a certificate signed by the President of the Company stating that, in the good faith judgment of the Board of Directors, it would be seriously detrimental to the Company or its stockholders for registration statements to be filed in the near future or for any disclosure to be made that, in the opinion of the Board of Directors, duly advised by counsel, is required to be made in connection with the sale of Registrable Securities

pursuant to such registration, whereby the Company's obligation to use its best efforts to file a registration statement shall be deferred for a period not to exceed 120 days from the receipt of the request to file such registration by such Holder; provided however, that the Company shall not exercise such right more than once in any twelve month period.

8. Expenses of Registration. All Registration Expenses incurred in connection with the registrations pursuant to Sections 5, 6 and 7 shall be borne by the Company.

9. Registration Procedures. Whenever required under this Agreement to effect the registration of any Registrable Securities, the Company will:

(a) Prepare and promptly file with the Commission a registration statement with respect to such Registrable Securities and use its best efforts to cause such registration statement to become and remain effective for the greater of (i) one hundred twenty (120) days or (ii) until the distribution described in the registration statement has been completed;

(b) Prepare and file with the Commission such amendments and supplements to such registration statements and the prospectus used in connection with such registration statement as may be necessary to comply with the provisions of the Act with respect to the disposition of all securities covered by such registration statement;

(c) At least two business days before filing a registration statement or prospectus including Registrable Securities and at least two business days before filing any amendments or supplements thereto, furnish to the counsel of the Holders copies of all documents proposed to be filed for that counsel's review and approval, which approval shall not be unreasonably withheld or delayed;

(d) Furnish to the Holders participating in such registration and to the underwriters of the securities being registered such reasonable number of copies of the registration statement, preliminary prospectus, final prospectus and such other documents as such Holders and underwriters may reasonably request in order to facilitate the public offering of such securities;

(e) Furnish, at the request of any Holder requesting registration of Registrable Securities pursuant to this Agreement, on the date that such Registrable Securities are delivered to the underwriters for the sale in connection with a registration pursuant to this Agreement, or, if such securities are not being sold through underwriters, on the date that the registration statement with respect to such securities becomes effective, (i) an opinion, dated such date, of counsel representing the Company for the purposes of such registration, in form and substance as is customarily given to underwriters in an underwritten public offering, addressed to the underwriters, if any, and to the Holders requesting registration of Registrable Securities and (ii) a letter dated such date, from the independent accountants of the Company, in form and substance as is customarily given by independent accountants to underwriters in an underwritten public offering, addressed to the underwriters, if any, and to the Holders requesting registration of Registrable Securities;

(f) In the event of any underwritten public offering, enter into and perform its obligations under an underwriting and other agreements, in usual and customary form, with the managing underwriter of such offering and take all other actions in connection with those agreements reasonably necessary to effect the offer and sale of the Registrable Securities. Each Holder participating in such underwriting shall also enter into and perform its obligations under such underwriting agreement;

(g) Notify each Holder of Registrable Securities covered by such registration statement at any time when a prospectus relating thereto is required to be delivered under the Securities Act of the happening of any event as a result of which the prospectus included in such registration statement, as then in effect, or any document included therein by reference includes an untrue statement of material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading in the light of the circumstances then existing, and prepare a supplement or amendment to the prospectus or any such document incorporated therein by reference so that thereafter the prospectus will not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading in light of the circumstances then existing;

(h) Cooperate with each seller of Registrable Securities and each underwriter or agent participating in the disposition of such Registrable Securities and their respective counsel in connection with any required filings with the National Association of Securities Dealers, Inc.;

(i) Cause such Registrable Securities registered pursuant hereunder to be listed on each securities exchange or each inter dealer quotation system on which similar securities issued by the Company are then listed or quoted;

(j) Provide an institutional transfer agent and registrar for all Registrable Securities registered pursuant hereunder and a CUSIP number for all such Registrable Securities, in each case not later than the effective date of such registration;

(k) Use its reasonable best efforts to register and qualify the securities covered by such registration statement under such other securities or blue sky laws of such jurisdictions as shall be reasonably requested by the Holders, provided that the Company shall not be required in connection therewith or as a condition thereto to qualify to do business or to file a general consent to service of process in any such states or jurisdictions;

(l) Subject to reasonable confidentiality agreements, make available for inspection during business hours on reasonable advance notice by any underwriter participating in any disposition pursuant to a registration statement, and any attorney, accountant or other agent of such underwriter (collectively, the "Inspectors"), financial records, pertinent corporate documents and properties of the Company (collectively, the "Records") as shall be reasonably necessary to enable them to exercise their due diligence responsibility, and cause the Company's officers, directors and employees to supply all information reasonably requested by any such Inspector in connection with such registration statement. Records which the Company determines, in good faith, to be confidential and which it notifies the Inspectors are confidential

shall not be disclosed by the Inspectors unless (i) the disclosure of such Records is necessary to avoid or correct a material misstatement or omission in the registration statement or (ii) the release of such Records is ordered pursuant to a subpoena or other order from a court of competent jurisdiction. Each Holder selling Registrable Securities further agrees that it will, upon learning that disclosure of such Records is sought in a court of competent jurisdiction, give written notice to the Company, and allow the Company, at the Company's expense, to undertake appropriate action to prevent disclosure of the Records it deemed confidential. Each Holder of such Registrable Securities further agrees that information obtained by it as a result of such inspections which is deemed confidential by the Company shall not be used by it, and it shall cause each of its Inspectors not to use such confidential information as the basis for any market transactions in securities of the Company or for any purpose other than any due diligence review with respect to decisions regarding such Holder's investment in the Registrable Shares, unless and until such information is made generally available to the public; and

(m) Notify the Holders and the managing underwriters, if any, promptly, and (if requested by any such Person) confirm such advice in writing, (i) when the registration statement, the prospectus or any prospectus supplement or post effective amendment, has been filed, and, with respect to the registration statement or any post effective amendment, when the same has become effective, (ii) of the issuance by the Commission of any stop order suspending or threatening to suspend the effectiveness of a registration statement or of any order preventing or suspending the use of any preliminary prospectus or the initiation of any proceedings for that purpose and the Company shall promptly use its best efforts to prevent the issuance of any stop order or to obtain a withdrawal of such stop order should the order be issued and (iii) of the receipt by the Company of any notification with respect to the suspension of the qualification or exemption from qualification of a registration statement of any of the Registrable Securities for offer or sale in any jurisdiction, or the initiation or threatening of any proceeding for such purpose.

10. Indemnification. In the event any Registrable Securities are included in a registration statement filed pursuant to this Agreement.

(a) To the extent permitted by law, the Company will indemnify each Holder, each of its officers, directors, and partners, and each person controlling such Holder within the meaning of Section 15 of the Act, with respect to which registration, qualification, or compliance has been effected pursuant to this Agreement, and each underwriter, if any, and each person who controls any underwriter within the meaning of Section 15 of the Act, against all expenses, claims, losses, damages, or liabilities (whether joint or several and including actions in respect thereof), including any of the foregoing incurred in settlement of any litigation, commenced or threatened, arising out of or based on any untrue statement (or alleged untrue statement) of a material fact contained in any registration statement, prospectus, offering circular, or other document, or any amendment or supplement thereto, incident to any such registration, qualification or compliance, or based on any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances in which they were made, not misleading, or any violation by the Company of the Act, the Exchange Act, any federal or state securities law or any rule or regulation promulgated under the Act, the Exchange Act or any federal or state securities law or regulation applicable to the Company in connection with any such registration, qualification, or

compliance, and the Company will reimburse each such Holder, each of its officers, directors, partners, each person controlling such Holder, each such underwriter and each person who controls such underwriter, for any legal and any other expenses reasonably incurred in connection with the investigating, preparing, or defending any such claim, loss, damage, liability, or action; provided that the Company will not be liable in any such case to the extent that any such claim, loss, damage, liability or expense arises out of or is based solely on any untrue statement or omission or alleged untrue statement or omission, made solely in reliance upon and in conformity with written information furnished to the Company by an instrument duly executed by such Holder, controlling person, or underwriter and stated to be specifically for use therein; and provided further, that the Company will not be liable to any underwriter or any person who controls such underwriter for any claim, loss, damage, liability or expense that arises out of or is based upon any untrue statement or omission or alleged untrue statement or omission made in a preliminary prospectus on file with the Securities and Exchange Commission at the time the Registration Statement becomes effective or in the amended prospectus filed with the Securities and Exchange Commission pursuant to Rule 424(b) (the "Final Prospectus") if a copy of the Final Prospectus was not furnished to the person asserting the claim, loss, damage, liability or expense at or prior to the time such action is required by the Act.

(b) To the extent permitted by law, each Holder will, if Registrable Securities held by such Holder are included in the securities as to which such registration, qualification, or compliance is being effected, and each other Company stockholder whose securities are included in the securities as to which such registration, qualification or compliance is being effected ("Other Stockholder") indemnify the Company, each of its directors and officers, each underwriter, if any, of the Company's securities covered by such a registration statement, each person who controls the Company or such underwriter within the meaning of Section 15 of the Act, and each other such Holder and Other Stockholder, each of its officers, directors, and partners and each person controlling such Holder and Other Stockholder within the meaning of Section 15 of the Act, against all claims, losses, damages and liabilities (whether joint or several and including actions in respect thereof) arising out of or based on any untrue statement (or alleged untrue statement) of a material fact contained in any such registration statement, prospectus, offering circular or other document, or any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, and will reimburse the Company, such other Holders, such Other Stockholders, such directors, officers, persons, underwriters, or control persons for any legal or any other expenses reasonably incurred in connection with investigating or defending any such claim, loss, damage, liability or action, in each case to the extent, but only to the extent, that such untrue statement (or alleged untrue statement) or omission (or alleged omission) is made in such registration statement, prospectus, offering circular, or other document in reliance upon and conformity with written information furnished to the Company by an instrument duly executed by such Holder or such Other Stockholder and stated to be specifically for use therein; provided, however, that the indemnity agreement contained in this subsection 10(b) shall not apply to amounts paid in settlement of any such claim, loss, damage, liability or action if such settlement is effected without the consent of the Holder or the Other Stockholder, which consent shall not be unreasonably withheld; and provided further, that, in no event shall any indemnity under this subsection 10(b) exceed the net proceeds (after deducting any discounts or commissions received by any underwriter in connection with such registration) from the offering received by such Holder or such Other Stockholder; and provided further, that any such Holder or such Other

Stockholder will not be liable to any underwriter or any person who controls such underwriter for any claim, loss, damage, liability or expense that arises out of or is based upon any untrue statement or omission or alleged untrue statement or omission made in the Final Prospectus if a copy of the Final Prospectus was not furnished to the person asserting the claim, loss, damage, liability or expense at or prior to the time such action is required by the Act.

(c) Each party entitled to indemnification under this Section 10 (the "Indemnified Party") shall give notice to the party required to provide indemnification (the "Indemnifying Party") promptly after such Indemnified Party has actual knowledge of any claim as to which indemnity may be sought, and shall permit the Indemnifying Party to assume the defense of any such claim or litigation resulting therefrom, provided that counsel for the Indemnifying Party, who shall conduct the defense of such claim or litigation, shall be approved by the Indemnified Party (whose approval shall not unreasonably be withheld), and the Indemnified Party may participate in such defense at such party's expense, and provided further that the failure of any Indemnified Party to give notice as provided herein shall not relieve the Indemnifying Party of its obligations under this Agreement except to the extent, but only to the extent, that the failure to give such notice is materially prejudicial to an Indemnifying Party's ability to defend such action and provided further, that the Indemnifying Party shall not assume the defense for matters as to which there is a conflict of interest or separate and different defenses but shall bear the expense of such defense nevertheless. No Indemnifying Party, in the defense of any such claim or litigation, shall, except with the consent of each Indemnified Party, consent to entry of any judgment or enter into any settlement which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Indemnified Party of a release from all liability in respect to such claim or litigation.

(d) If the indemnification provided for in this Section 10 is unavailable to or unenforceable by the Indemnified Party in respect of any losses, claims, damages, liabilities or judgments referred to herein, then each such Indemnifying Party, in lieu of indemnifying such Indemnified Party, shall contribute to the amount paid or payable by such Indemnified Party as a result of such losses, claims, damages, liabilities and judgments in such proportions as is appropriate to reflect the relative fault of the Indemnified Party in connection with the actions or inactions which resulted in such losses, claims, damages, liabilities and judgments, as well as any other relevant equitable considerations (including the relative fault and indemnification or contribution obligations of other relevant parties). The relative fault of the Indemnifying Party on the one hand and of the Indemnified Party on the other shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Indemnifying Party or by the Indemnified Party, and by such party's relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The Indemnified Persons agree that it would not be just and equitable if contribution pursuant to this Section 10(d) were determined by pro rata allocation or by any other method of allocation which does not take account of the equitable considerations referred to in the immediately preceding paragraph. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. In no event shall any Holder or Other Stockholder be liable for contribution pursuant to this Section 10(d) to the extent the aggregate payments made by such Holder or Other Stockholder pursuant to Section 10(b) and this Section 10(d) exceed the

net proceeds (after deducting any discounts or commissions received by an underwriter in connection with such registration) from the offering received by such Holder or Other Stockholder.

(e) The obligations of the Company and the Holders under this Section 10 shall survive the completion of any offering of Registrable Securities in a registration statement pursuant to this Agreement.

11. Information by Holder. The Holder or Holders of Registrable Securities included in any registration shall furnish to the Company such information regarding such Holder or Holders, the Registrable Securities held by them, and the distribution proposed by such Holder or Holders as the Company may request in writing and as shall be required in connection with any registration, qualification, or compliance referred to in this Agreement.

12. Rule 144 Reporting. With a view to making available the benefits of certain rules and regulations of the Commission which may at any time permit the sale of the Restricted Securities to the public without registration, after such time as a public market exists for the Common Stock of the Company, the Company agrees to use its best efforts to:

(a) Make and keep public information available, as those terms are understood and defined Rule 144 under the Act, at all times after the effective date that the Company becomes subject to the reporting requirements of the Act or the Exchange Act.

(b) File with the Commission in a timely manner all reports and other documents required of the Company under the Act and the Exchange Act; and

(c) So long as a Holder owns any Restricted Securities, to furnish to the Holder forthwith upon request a written statement by the Company as to its compliance with the reporting requirements of said Rule 144 (at any time after 90 days after the effective date of the first registration statement filed by the Company for an offering of its securities to the general public), a copy of the most recent annual or quarterly report of the Company, and such other reports and documents of the Company and other information in the possession of or reasonably obtainable by the Company as a Holder may reasonably request in availing itself of any rule or regulation of the Commission allowing a Holder to sell any such securities without registration.

13. Transfer of Registration Rights. The rights to cause the Company to register securities granted to Holders under Sections 5, 6, and 7 may be assigned to a transferee or assignee in connection with any transfer or assignment of Registrable Securities by a Holder of not less than 100,000 shares of Registrable Securities (subject to the limitations of Section 3), or to any transferee or assignee who is an affiliate or a constituent partner of a Holder or the estate of such constituent partner, provided that such transfer may otherwise be effected in accordance with applicable securities laws, and notice of such transfer is provided promptly to the Company.

14. Market Standoff Agreement. Each Holder agrees in connection with the Company's initial public offering of securities, upon request of the Company or the underwriters managing such offering of the Company's securities, not to sell, make any short sale of, loan, grant any option for the purchase of, or otherwise dispose of any Registrable Securities (other

than those Registrable Securities included in the registration and other than transactions with affiliates of the Holder who shall agree to be similarly bound) without the prior written consent of the Company or such underwriters, as the case may be, for such period of time (not to exceed, in any event, one hundred eighty (180) days) from the effective date of such registration as may be requested by the underwriters; provided, however, that the Holders shall have no such obligation under this paragraph 14 unless the officers and directors and all holders of at least one percent (1 %) of the Company's issued and outstanding capital stock shall also agree to such restrictions.

15. Limitations on Registration of Resales of Securities. From and after the date of this Agreement, the Company shall not enter into any agreement with any holder or prospective holder of any securities of the Company giving such holder or prospective holder either (i) the right to require the Company to initiate any registration of any securities of the Company or (ii) the right to have its securities included in a registration by the Company, the Holders pursuant to this Agreement or any other person or entity if such right would permit the securities held by such holder or perspective holder to be registered before all Registrable Securities that have been requested to be included are included. The Company's obligations set forth in the preceding sentence shall be for a period of four years (plus the aggregate number of days that the Company has delayed any registrations pursuant to its rights under Section 5(a)(6)) following the effective date of the initial public offering of the Company's Common Stock registered under the Securities Act. This Section 15 shall not limit the right of the Company to enter into any agreements with any holder or prospective holder of any securities of the Company giving such holder or prospective holder the right to require the Company, upon any registration of any of its securities (except on initial public offering), to include, among the securities which the Company is then registering, securities owned by such holder so long as they are subject to all cutback and priority limitations of this Agreement.

16. Notices, etc. All notices and other communications required or permitted hereunder shall be in writing and shall be deemed effectively given upon delivery to the party to be notified in person or by courier service or five (5) days after deposit with the United States mail, by registered or certified mail, postage prepaid, addressed (a) if to a Holder of any Registrable Securities, to its address set forth on the Schedule of Purchasers attached hereto or such address as such holder shall have furnished the Company in writing, or (b) if to the Company, to:

Acorda Therapeutics, Inc.  
15 Skyline Drive  
Hawthorne, NY 10532  
Attn: Chief Financial Officer

or at such other address as the Company shall have furnished to the Holders in writing.

17. Amendment. Any provision of this Agreement may be amended, waived or modified upon the written consent of (i) the Company and (ii) holders of sixty percent or more of the outstanding shares of Registrable Securities. Any Holder may waive any of its rights or the Company's obligations hereunder without obtaining the consent of any other person.

18. **Suppression of Earlier Agreement**. This Agreement shall supersede in its entirety the Prior Agreement. This agreement shall be effective simultaneous with the closing of the initial sale of Series K Preferred Stock by the Company, provided at such time Holders that hold sufficient shares of Preferred Stock and shares of one or more series of Preferred Stock sufficient to amend the Prior Agreement shall have executed and delivered a signed counterpart of this Agreement.

19. **Counterparts**. This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which together shall constitute one instrument.

20. **Governing Law**. This Agreement shall be governed by the laws of the State of Delaware.

21. **Regulated Financial Institutions Compliance Obligations**. Nothing in this agreement shall diminish the continuing obligations of any financial institution to comply with applicable requirements of law that it maintain responsibility for the disposition of, and control over its admitted assets, investments and property, including (without limiting the generality of the foregoing) the provisions of Section 114l(b) of the New York Insurance Law, as amended, and as hereinafter from time to time in effect.

22. **Listing**. If the Common Stock is listed for trading on any national securities exchange, that listing shall include all Registrable Securities of the Holders (to the extent permitted by the rules of the exchange).

23. **Severability**. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, that provision will be ineffective only to the extent of the prohibition or invalidity, without invalidating the remainder of this Agreement.

24. **Specific Performance**. Each of the parties agrees that damages for a breach of or default under this Agreement would be inadequate and that in addition to all other remedies available at law or in equity the parties and their successors and assigns shall be entitled to specific performance on injunctive relief, or both, in the event of a breach or threatened breach of this Agreement.

25. **Validity of Provisions**. Should any part of this Agreement for any reason be declared by any court of competent jurisdiction to be invalid, that decision shall not affect the validity of the remaining portion, which shall continue in full force and effect as if this Agreement had been executed with the invalid portion eliminated, it being the intent of the parties that they would have executed the remaining portion of the Agreement without including any part or portion that may for any reason be declared invalid.

26. **Waiver of Breach**. Neither any waiver of any breach of, nor any failure to enforce any term or condition of, this Agreement shall operate as a waiver of any other breach of any term or condition, nor constitute nor be deemed a waiver or release of any other rights, in law or at equity, or claims that any party may have against any other party for anything arising

out of, connected with, or based upon this Agreement. No waiver shall be enforceable against any party hereto unless set forth in a written instrument or agreement signed by that party. No waiver shall be deemed to occur as a result of the failure of any party to enforce any term or condition of this Agreement.

IN WITNESS WHEREOF, the undersigned have executed this Sixth Amended and Restated Registration Rights Agreement as of the date first set forth above.

“Company”

**Acorda Therapeutics, Inc.**  
a Delaware corporation

By: /s/ Ron Cohen  
Ron Cohen, M.D., President and CEO

“Holders”

(Print Name of Holder)

(Signatory)

(Print Name of Signatory)

(Title of Signatory)

IN WITNESS WHEREOF, the undersigned have executed this Sixth Amended and Restated Registration Rights Agreement as of the date first set forth above.

“Company”

**Acorda Therapeutics, Inc.**  
a Delaware corporation

By: /s/ Ron Cohen  
Ron Cohen, M.D., President and CEO

“Holders”

EASTON HUNT CAPITAL PARTNERS, L.P.  
*(Print Name of Holder)*

/s/ Richard P. Schneider  
*(Signatory)*

RICHARD P. SCHNEIDER  
*(Print Name of Signatory)*

VICE PRESIDENT & SECRETARY,  
EHC, INC, the General Partner  
of EHC GP, LP, General Partner  
*(Title of Signatory)*

IN WITNESS WHEREOF, the undersigned have executed this Sixth Amended and Restated Registration Rights Agreement as of the date first set forth above.

“Company”

**Acorda Therapeutics, Inc.**  
a Delaware corporation

By: \_\_\_\_\_  
Ron Cohen, M.D., President and CEO

“Holders”

EASTON HUNT NEW YORK, LP  
*(Print Name of Holder)*

/s/ Richard P. Schneider  
\_\_\_\_\_  
*(Signatory)*

RICHARD P. SCHNEIDER  
*(Print Name of Signatory)*

VICE PRESIDENT  
EHCNY, Inc, the Managing Member of  
EHNY, LLC, General Partner  
*(Title of Signatory)*

out of, connected with, or based upon this Agreement. No waiver shall be enforceable against any party hereto unless set forth in a written instrument or agreement signed by that party. No waiver shall be deemed to occur as a result of the failure of any party to enforce any term or condition of this Agreement.

IN WITNESS WHEREOF, the undersigned have executed this Sixth Amended and Restated Registration Rights Agreement as of the date first set forth above.

“Company”

**Acorda Therapeutics, Inc.**  
a Delaware corporation

By: \_\_\_\_\_  
Ron Cohen, M.D., President and CEO

“Holders”

Cross Atlantic Partners IV  
*(Print Name of Holder)*

/s/ Sandra Panem  
*(Signatory)*

Sandra Panem  
*(Print Name of Signatory)*

Partner  
*(Title of Signatory)*

out of, connected with, or based upon this Agreement. No waiver shall be enforceable against any party hereto unless set forth in a written instrument or agreement signed by that party. No waiver shall be deemed to occur as a result of the failure of any party to enforce any term or condition of this Agreement.

IN WITNESS WHEREOF, the undersigned have executed this Sixth Amended and Restated Registration Rights Agreement as of the date first set forth above.

“Company”

**Acorda Therapeutics, Inc.**  
a Delaware corporation

By: \_\_\_\_\_  
Ron Cohen, M.D., President and CEO

“Holders”

Cross Atlantic Partners for  
Nordea Bank Danmark A/S  
(*Print Name of Holder*)

/s/ Sandra Panem  
\_\_\_\_\_  
(*Signatory*)

Sandra Panem  
\_\_\_\_\_  
(*Print Name of Signatory*)

Investment Officer  
\_\_\_\_\_  
(*Title of Signatory*)

IN WITNESS WHEREOF, the undersigned have executed this Sixth Amended and Restated Registration Rights Agreement as of the date first set forth above.

“Company”

**Acorda Therapeutics, Inc.**  
a Delaware corporation

By: \_\_\_\_\_  
Ron Cohen, M.D., President and CEO

“Holders”

TVM V Life Science Ventures GmbH & Co. KG  
*(Print Name of Holder)*

/s/ Gert Gaspritz                  /s/ Mark G. Cipriano  
*(Signatory)*

Gert Gaspritz / Mark G. Cipriano  
*(Print Name of Signatory)*

MANAGING LIMITED PARTNERS  
*(Title of Signatory)*

IN WITNESS WHEREOF, the undersigned have executed this Sixth Amended and Restated Registration Rights Agreement as of the date first set forth above.

“Company”

**Acorda Therapeutics, Inc.**  
a Delaware corporation

By: \_\_\_\_\_  
Ron Cohen, M.D., President and CEO

“Holders”

Integra Ventures III, L.P., SBIC  
By IV Technologies, LLC General Partner  
(*Print Name of Holder*)

/s/ Joseph K. Piper  
(*Signatory*)

Joseph K. Piper  
(*Print Name of Signatory*)

Managing Director  
(*Title of Signatory*)

IN WITNESS WHEREOF, the undersigned have executed this Sixth Amended and Restated Registration Rights Agreement as of the date first set forth above.

“Company”

**Acorda Therapeutics, Inc.**  
a Delaware corporation

By: \_\_\_\_\_  
Ron Cohen, M.D., President and CEO

“Holders”

Jennison Health Sciences Fund, a series of the  
Jennison Sector Funds, Inc. (the “Fund”)  
*(Print Name of Holder)*

/s/ David Chan  
\_\_\_\_\_  
*(Signatory)*

Jennison Associates LLC (“Jennison”), as  
subadviser for the Fund, by David Chan  
*(Print Name of Signatory)*

Executive Vice President of Jennison and portfolio  
Manager of the Fund  
*(Title of Signatory)*

IN WITNESS WHEREOF, the undersigned have executed this Sixth Amended and Restated Registration Rights Agreement as of the date first set forth above.

“Company”

**Acorda Therapeutics, Inc.**  
a Delaware corporation

By: \_\_\_\_\_  
Ron Cohen, M.D., President and CEO

“Holders”

**NIF Ventures Co., Ltd.**  
*(Print Name of Holder)*

/s/ Nobuo Suzuki  
*(Signatory)*

**Nobuo Suzuki**  
*(Print Name of Signatory)*

**Executive Officer**  
*(Title of Signatory)*

IN WITNESS WHEREOF, the undersigned have executed this Sixth Amended and Restated Registration Rights Agreement as of the date first set forth above.

“Company”

**Acorda Therapeutics, Inc.**  
a Delaware corporation

By: \_\_\_\_\_  
Ron Cohen, M.D., President and CEO

“Holders”

**Investment Enterprise Partnership**  
**“NIF 21-ONE(1)”**  
(*Print Name of Holder*)

/s/ Shinichiro Hakuta  
(*Signatory*)

**Shinichiro Hakuta**  
(*Print Name of Signatory*)

**General Manager**  
(*Title of Signatory*)

IN WITNESS WHEREOF, the undersigned have executed this Sixth Amended and Restated Registration Rights Agreement as of the date first set forth above.

“Company”

**Acorda Therapeutics, Inc.**  
a Delaware corporation

By: \_\_\_\_\_  
Ron Cohen, M.D., President and CEO

“Holders”

Grand Cathay Venture Capital Co., Ltd.  
*(Print Name of Holder)*

/s/ Edward Chang  
*(Signatory)*

Edward Chang  
*(Print Name of Signatory)*

President  
*(Title of Signatory)*

IN WITNESS WHEREOF, the undersigned have executed this Sixth Amended and Restated Registration Rights Agreement as of the date first set forth above.

“Company”

**Acorda Therapeutics, Inc.**  
a Delaware corporation

By: \_\_\_\_\_  
Ron Cohen, M.D., President and CEO

“Holders”

Prudence Venture Investment Crop.  
*(Print Name of Holder)*

/s/ Jessica Wu  
*(Signatory)*

Jessica Wu  
*(Print Name of Signatory)*

President  
*(Title of Signatory)*

IN WITNESS WHEREOF, the undersigned have executed this Sixth Amended and Restated Registration Rights Agreement as of the date first set forth above.

“Company”

**Acorda Therapeutics, Inc.**  
a Delaware corporation

By: \_\_\_\_\_  
Ron Cohen, M.D., President and CEO

“Holders”

Pan-Pacific Venture Capital Co., Ltd.  
*(Print Name of Holder)*

/s/ David Y. S. Chao  
*(Signatory)*

David Y. S. Chao  
*(Print Name of Signatory)*

President  
*(Title of Signatory)*

**SCHEDULE OF PURCHASERS**

**Dated as of March 2, 2004**

<u>Name and Address of Purchaser</u>	<u>Number of Purchased Shares</u>	<u>Purchase Price</u>
Easton Hunt Capital Partners, L.P. 641 Lexington Avenue, 21st Floor New York, NY 10022 Attn: John H. Friedman	100,000	\$ 750,000.00
Easton Hunt New York, L.P. 641 Lexington Avenue, 21 <sup>st</sup> Floor New York, NY 10022 Attn: John H. Friedman	100,000	\$ 750,000.00
Cross Atlantic Partners IV, K/S c/o Cross Atlantic Partners, Inc. 55 Madison Avenue, 7 <sup>th</sup> Floor New York, NY 10022 Attn: John L. Cassis	55,574	416,805.00
Nordea Bank Danmark A/S c/o Cross Atlantic Partners, Inc. 551 Madison Avenue, 7th Floor New York, NY 10022	11,093	83,197.50
TVM V Life Science Ventures GmbH & Co. KG. c/o TVM Techno Venture Management GmbH & Co. KG Maximillanstrasse 35 Entrance C 80539 Munich, Germany	66,666	\$ 499,995.00
Integra Ventures III, L.P., SBIC 300 E. Pine Seattle, WA 98122 Attn: Tim Black	133,333	\$ 999,997.50
Jennison Health Sciences Fund Jennison Sector Funds, Inc. c/o Jennison Associates, LLC 466 Lexington Avenue, 18 <sup>th</sup> Floor New York, NY 10017 Attn: David Chan, CFA	533,333	\$ 3,999,997.50

Name and Address of Purchaser	Number of Purchased Shares	Purchase Price
NIF Ventures Co, Ltd. 1-2-1, Kyobashi, Chuo-ku Tokyo, 104-0031, Japan Attn: Chika Yoshinaga, MD	53,333	\$ 399,997.50
Investment Enterprise Partnership NIF 21-ONE (1) c/o NIF Ventures Co, Ltd. 1-2-1, Kyobashi, Chuo-ku Tokyo, 104-0031, Japan Attn: Chika Yoshinaga, MD	213,333	\$ 1,599,997.50
Grand Cathay Venture Capital Co., Ltd. c/o CIDC Consultants, Inc. Prudence Capital Taipei, Taiwan Attn: Ching-chih Lai	93,330	\$ 699,980.50
Prudence Venture Investment c/o CIDC Consultants, Inc. Prudence Capital Taipei, Taiwan Attn: Ching-chih Lai	66,666	\$ 499,995.00
Pan-Pacific Venture Capital Co., Ltd. Uni-Pac Management Company PVCC Fund I & II 6F, No. 21, Lane 120, Sec. 1 Neihu Rd. Taipei, 144, Taiwan, R.O.C. Attn: David Y.S. Chao	106,666	\$ 799,995.00
<b>TOTAL</b>	<b>1,533,327</b>	<b>\$ 11,499,958.00</b>

## Exhibit 10.5

ACORDA  
Therapeutics

August 11, 2002

Dr. Ron Cohen  
145 West 58<sup>th</sup> Street  
New York, NY 10019

Dear Ron:

We are delighted to present this letter agreement, setting out the terms of your continued employment with Acorda Therapeutics, Inc. (the "Company") as President, Director and Chief Executive Officer. If these terms are acceptable, please sign and date the copy of this letter provided herewith and return it to me at your first convenience. If you accept the terms offered herein, this Agreement shall be deemed to be effective as of January 1, 2002 (the "Effective Date").

**1. Employment.**

You will be employed by the Company, as President and Chief Executive Officer. As President and Chief Executive Officer you will have overall responsibility for all aspects of the Company's business. You will report directly to the Board of the Director's of the Company (the "Board"). You will also serve as a member of the Board.

**2. Base Salary.**

In consideration for your services under this Agreement, you shall be paid an annual base salary of Two Hundred and Eighty Thousand Dollars (\$280,000), to be paid in accordance with the Company's standard payroll practices. Your base salary shall be reviewed annually by the Board and any increase to your base salary shall be determined by the Board based on your performance and the Company's overall performance.

**3. Annual Bonus.**

You shall be eligible to receive an annual bonus in an amount determined by the Board in its sole discretion based on your performance.

**4. Benefits; Perquisites; Reimbursement of Expenses.**

In addition to those payments set forth above, you shall be entitled to the following benefits and payments:

(a) *Employee Benefit Plans Generally* . You shall be entitled to participate in all employee benefit plans which the Company provides or may establish from time to time for the benefit of its senior executives.

(b) *Vacation* . You shall be entitled to paid vacation in accordance with the Company's vacation policy as that policy may be amended from time to time.

---

(c) *Perquisites and Reimbursement of Expenses*. You shall be entitled to all perquisites offered to senior executives of the Company. In addition, you shall be entitled to reimbursement for all ordinary and reasonable out-of-pocket business expenses which are incurred by you in furtherance of the Company's business, in accordance with the policies adopted from time to time by the Company.

(d) *Insurance*. You shall be covered by a Directors and Officers Liability Insurance policy that generally covers the directors and officers of the Company, provided by the Company at its expense. You shall cooperate in all respects with the Company's efforts to obtain and maintain key person life insurance on your life.

(e) *Legal Fees*. The Company shall reimburse you for legal fees incurred in connection with the negotiation and drafting of this Agreement, up to a maximum of Five Thousand Five Dollars (\$5,500).

## **5. Stock Options.**

You shall be eligible to receive annual performance-based stock option grants to purchase shares of the Company's common stock. The number of annual options granted shall be determined by the Board, based on the achievement of individual performance objectives and the Company's achievement of its goals and objectives. All such options shall be granted pursuant to and in accordance with the terms of the Acorda Therapeutics, Inc. 1999 Employee Stock Option Plan and/or any additional or replacement plan adopted by the Board (the "Plan(s)") except as such terms may be specifically modified herein. Unless otherwise provided for in any option agreement, all options granted to you shall vest in 16 equal quarterly installments, beginning with the first day of the quarter next following the date the option is granted. Unless otherwise limited by IRS rules governing the issuance of incentive options to principal stockholders of the Company, all options shall be exercisable for 10 years following the date of grant. You shall be eligible to exercise all options granted on a cashless basis, and otherwise in accordance with the terms of the Plan(s).

## **6. Term; Termination.**

(a) *Term*. The term of this Agreement shall continue for a period of one year following the Effective Date, unless earlier terminated as provided herein, and shall be automatically renewed for successive one year terms unless the Company or you provide written notice of its or your determination not to renew this Agreement at least 60 days prior to the expiration of the then current term. A determination by you or the Company not to renew this Agreement based upon Good Reason or Without Cause, as the case may be, shall be deemed a termination of employment for purposes of Section 6(c) and the terms thereof shall apply.

(b) *Death or Disability*. Your employment with the Company shall terminate as of the date of your death or the date you are determined to be “Disabled.” Upon such termination, the following shall apply:

- (i) The Company shall pay to you or your estate, as the case may be, (A) all amounts due and owing as of the date of termination and (B) your base salary through the end of the third month following the date your employment is terminated.
- (ii) If you or your eligible spouse and dependents timely elect health care continuation coverage (“COBRA Coverage”), the Company shall pay the monthly premiums for such coverage for the duration of the applicable COBRA Coverage period.
- (iii) 65% of all unvested stock options shall become immediately vested and shall remain exercisable by you or your estate, as the case may be, for 48 months following the termination date.

For these purposes, you shall be considered to be Disabled if you are unable to perform the substantial functions of your position for 180 consecutive days or more in a 12 month period, unless a greater period is required by law. A determination of disability shall be made jointly by a physician of your choice and a physician of the Company’s choice. If both physicians can not agree on whether you are Disabled, a third physician chosen by the first two shall make the final and binding determination.

(c) *Termination of Your Employment by the Company Without Cause or Voluntary Termination by You With Good Reason*. If the Company terminates your employment without Cause or if you terminate your employment with Good Reason the following shall apply:

- (i) The Company shall pay to you your base salary for a period of one (1) year following the date of such termination (the “Severance Period”). You shall be under no obligation to secure alternative employment during the Severance Period, and payment of your base salary shall be made without regard to any subsequent employment you may obtain.
- (ii) The Company shall also pay you a bonus equal to the last annual bonus you received multiplied by a fraction, the numerator of which shall be the number of days in the calendar year elapsed as of the termination date and the denominator of which shall be 365.
- (iii) If you or your eligible spouse and dependents timely elect COBRA Coverage, the Company shall pay the monthly premiums for such coverage during the Severance Period; provided that, if you elect coverage under a subsequent employer’s group health insurance plan during the Severance Period, payment of such premiums shall cease.

(iv) All stock options granted to you hereunder or under any other agreement shall become immediately and fully vested as of the termination date, and shall remain exercisable for 48 months following such date.

(d) *Termination of Your Employment by the Company With Cause or by You Without Good Reason*. The Company may terminate your employment with Cause or you may resign at any time. In such case, you shall be paid all amounts due for services rendered under this Agreement up until the termination date. Thereafter, no further payments shall be made to you under this Agreement. All stock options granted to you hereunder or under any other agreement that are fully vested as of the date of your termination shall remain exercisable for ninety (90) days from the termination date. If you dispute the grounds for your termination, your vested options will remain exercisable until ninety (90) day after the date the dispute is resolved. All unvested options shall be forfeited.

(e) *Cause*. As used herein, “Cause” means that you have:

- (i) committed gross negligence in connection with your duties as set forth herein or otherwise with respect to the business and affairs of the Company, which gross negligence has a material adverse effect on the business of the Company or your ability to perform your duties under this Agreement;
- (ii) committed fraud in connection with your duties as set forth herein or otherwise with respect to the business and affairs of the Company;
- (iii) engaged in “willful misconduct” with respect to the business and affairs of the Company. For purposes of this Agreement, “willful misconduct” means misconduct committed with actual knowledge that your actions violate directions and instructions of the Board, which directions and instructions are legal and consistent with the Agreement;
- (iv) materially breached your duties under this Agreement, which breach has a material adverse effect on the business of the Company or your ability to perform your duties under the Agreement; or
- (v) been found by a court of competent jurisdiction to have committed or plead guilty to an unlawful act whether or not related to the business of the Company if the commission of such act has a material adverse effect either on (a) your ability to perform your duties under the Agreement or (b) the reputation and goodwill of the Company.

“Cause” shall be found only by a majority of the full Board and only after you have received notice from the Board, have had an opportunity to

discuss the issues with the Board, have had an opportunity to be heard generally and through counsel, and have been given a 30 day period to cure, where cure is feasible.

(f) *Good Reason*. As used herein, “Good Reason” means that:

- (i) the Company has materially breached this Agreement;
- (ii) you are removed or not appointed as a member the Board;
- (iii) the Company fails to acquire the assignment of this Agreement by an acquiring entity;
- (iv) your position has been materially reduced or you have been assigned duties that are materially inconsistent with your duties as set forth herein or which materially impair your ability to perform the services contemplated hereunder; or
- (v) the Company relocates its offices more than 60 miles from Hawthorne, New York.
- (vi) Termination for Good Reason may occur only after you have given the Board notice and 30 days to cure, where cure is feasible.

7. **Change in Control.**

(a) Subject to the provisions of this Section 7, the vesting of your options upon a Change of Control shall be governed by the terms of the Plans and your option agreements, but in no event shall less than 65% of your then unvested stock options become immediately vested and exercisable.

(b) *Voluntary Termination by You After a Change in Control Without Good Reason.* If you voluntarily terminate your employment following the effective date of the Change in Control the following shall apply:

- (i) The Company shall pay to you your base salary for a period of one (1) year following the date of such termination (the “Change in Control Severance Period”). You shall be under no obligation to secure alternative employment during the Change in Control Severance Period, and payment of your base salary shall be made without regard to any subsequent employment you may obtain;
- (ii) The Company shall also pay you a bonus equal to the last annual bonus you received multiplied by a fraction, the numerator of which shall be the number of days in the calendar year elapsed as of the termination date and the denominator of which shall be 365. Should the Company revise its compensation schedule, you will be paid a pro-rata bonus as reasonably determined under the compensation system then in place;

- (iii) If you or your eligible spouse and dependents timely elect COBRA Coverage, the Company shall pay the monthly premiums for such coverage during the Change in Control Severance Period; provided that, if you elect coverage under a subsequent employer's group health insurance plan during the Change in Control Severance Period, payment of such premiums shall cease; and
  - (iv) 65% of all outstanding options shall vest as of the termination date and shall remain exercisable for 48 months following such date.
- (c) If you voluntarily terminate your employment after a Change in Control with Good Reason, then Paragraph 6(c) shall apply in lieu of Paragraph 7(b).
- (d) *Change in Control Defined*. A Change in Control shall be deemed to have occurred if:
- (i) there is a consolidation or merger of the Company in which the Company is not the continuing or surviving corporation; or there is any other merger or consolidation if, after such merger or consolidation shareholders of the Company immediately prior to such merger or consolidation hold less than 50% of the voting stock of the surviving entity;
  - (ii) there is a sale or transfer of all or substantially all of the assets of the Company in one or a series of transactions or there is a complete liquidation or dissolution of the Company; or
  - (iii) any individual or entity or group acting in concert and affiliates thereof, acquires, directly or indirectly, more than 50% of the outstanding shares of voting stock of the Company; provided that this subsection (iii) shall not apply to an underwritten public offering of the Company's securities.

## **8. Confidentiality/Noncompetition.**

- (a) During the term of your employment and for an additional period of five years after you are no longer employed by the Company, you will not reveal, divulge or make known to any individual, partnership, joint venture, corporation or other business entity (other than the Company or its affiliates) or use for your own account any customer lists, trade secrets or any confidential information of any kind ("Protected Information") used by the Company or any of its commonly controlled affiliates in the conduct of the Company's business and made known to you by reason of your employment with the Company or any of its affiliates (whether or not developed, devised or otherwise created in whole or in part by your efforts); provided, that Protected Information shall not include information that shall become known to the public or the trade without violation of this Section 8(a); and provided, further, that you shall not violate this Section 8(a) if Protected Information is disclosed by you at the direction of the Company or if you are required to provide Protected Information in any legal proceeding or by order of any court.

(b) During the term of your employment and for an additional period of one year after you are no longer employed by the Company, you will not, directly or indirectly, engage in a Competitive Business, including owning or controlling an interest in (except as a passive investor owning less than two percent (2%) of the equity securities of a publicly-owned company), or acting as director, officer or employee of, or consultant to, any individual, partnership, joint venture, corporation or other business entity known to you to be engaged in a Competitive Business. "Competitive Business" shall mean the development of therapeutics for spinal cord injuries, multiple sclerosis and other central nervous system conditions for which the Company is actively seeking to develop therapeutics during the term of this Agreement; provided, however, that notwithstanding the aforesaid, you shall not be prohibited from acting in any of the aforesaid capacities for or with respect to any subsidiary, division, affiliate or unit (each, a "Unit") of an entity if that Unit itself is not engaged in a Competitive Business, irrespective of whether some other Unit of such entity engages in such competition (as long as you do not engage in a Competitive Business for such other Unit).

(c) During the term of your employment and for an additional period of one year after you are no longer employed by the Company, you shall not knowingly employ or solicit, encourage or induce any person (except your spouse, if applicable) who at any time within 90 days prior to the termination of your employment shall have been an employee of the Company or any of its commonly controlled affiliates, to become employed by or associated with any individual, partnership, joint venture, corporation or other business entity other than the Company, and you shall not knowingly approach any such employee for such purpose or authorize or knowingly approve the taking of such actions by any other individual, partnership, joint venture, corporation or other business entity or knowingly assist any such individual, partnership, joint venture, corporation or other business entity in taking such action.

(d) You acknowledge that the provisions of this Section 8 are reasonable and necessary for the protection of the Company and that each provision, and the period or periods of time and types and scope of restrictions on the activities specified herein are, and are intended to be divisible. In the event that any provision of this Agreement, including any sentence, clause or part hereof, shall be deemed contrary to law or invalid or unenforceable in any respect by a court of competent jurisdiction, the remaining provisions shall not be affected, but shall, subject to the discretion of such court, remain in full force and effect and any invalid and unenforceable provisions shall be deemed, without further action on the part of the parties hereto, modified, amended and limited to the extent necessary to render the same valid and enforceable.

(e) You acknowledge that the Company will be irreversibly damaged if the covenants contained herein are not specifically enforced. Accordingly, you agree that, in addition to any other relief to which the Company may be entitled, the Company shall be entitled to seek and obtain injunctive relief from a court of competent jurisdiction for the purposes of restraining you from any actual or threatened breach of such covenants.

**9. Miscellaneous Provisions.**

(a) *Notices*. All notices and other communications hereunder between you and the Company shall be in writing, shall be addressed to the receiving party's address of record (or to such other address as a party may designate by notice hereunder), and shall be either (i) delivered by hand, (ii) made by telecopy, (iii) sent by overnight courier, or (iv) sent by certified mail, return receipt requested, postage prepaid.

(b) *Modifications and Amendments*. The terms and provisions of this Agreement may be modified or amended only by written agreement executed by the parties hereto.

(c) *Waivers and Consents*. The terms and provisions of this Agreement may be waived, or consent for the departure therefrom granted, only by written document executed by the party entitled to the benefits of such terms or provisions. No such waiver or consent shall be deemed to be or shall constitute a waiver or consent with respect to any other terms or provisions of this Agreement, whether or not similar. Each such waiver or consent shall be effective only in the specific instance and for the purpose for which it was given, and shall not constitute a continuing waiver or consent.

(d) *Assignment*. This Agreement shall inure to the benefit of and be enforceable by your personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees and legatees. This Agreement may not be assigned or pledged by you. In the event of the merger or consolidation of the Company (whether or not the Company is the surviving or resulting corporation), the transfer of all or substantially all the assets of the Company, or the voluntary or involuntary dissolution of the Company, the surviving or resulting corporation or the transferee or transferees of the Company's assets shall be bound by this and the Company shall take all actions necessary to ensure that such corporation, transferee or transferees assume and are bound by its provisions.

(e) *Severability*. The parties intend this Agreement to be enforced as written. However, if any portion or provision of this Agreement shall to any extent be declared illegal or unenforceable by a duly authorized court of proper jurisdiction, then the remainder of this Agreement, or the application of such portion or provision in circumstances other than those as to which it is so declared illegal or unenforceable, shall not be affected thereby, and each portion and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

(f) *Choice of Law*. This Agreement and the rights and obligations of the parties hereunder shall be construed in accordance with and governed by the law of the State of New York, without giving effect to the conflict of law principles thereof.

(g) *Entire Agreement*. This Agreement constitutes the entire agreement of the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings of the parties hereto, oral or written, with respect to the subject matter hereof. Notwithstanding the preceding sentence, the provisions of the Acorda Therapeutics, Inc. Restricted Stock Purchase Agreement (dated March 1995) and the Series A Preferred Stock Purchase Agreement shall remain in effect pursuant to their respective terms

(h) *Arbitration*. Any dispute or controversy between you and the Company, arising out of or relating to this Agreement or the breach of this Agreement, shall be settled by arbitration administered by the American Arbitration Association (“AAA”) in accordance with its Employment Disputes Arbitration Rules then in effect, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Any arbitration shall be held before a single arbitrator who shall be selected by the mutual agreement of you and the Company, unless the parties are unable to agree to an arbitrator, in which case, the arbitrator will be selected under the procedures of the AAA. The arbitrator shall have the authority to award any remedy or relief that a court of competent jurisdiction could order or grant, including, without limitation, the issuance of an injunction. However, either party may, without inconsistency with this arbitration provision, apply to any court having jurisdiction over such dispute or controversy and seek interim provisional, injunctive or other equitable relief until the arbitration award is rendered or the controversy is otherwise resolved. Except as necessary in court proceedings to enforce this arbitration provision or an award rendered hereunder, to obtain interim relief, as required by law, or the party’s immediate family and legal and financial advisors, neither a party nor an arbitrator may disclose the existence, content or results of any arbitration hereunder without the prior written consent of you and the Company. The Company shall pay all costs and fees associated with such arbitration, including all arbitration fees, the arbitrator’s fees, attorneys’ fees and all costs.

If the terms of this Agreement are acceptable to you please sign where indicated below. It is understood and acknowledged that a fax signature will be considered to be valid as an original.

Very truly yours,

Acorda Therapeutics, Inc.

By: /s/ Mark Pinney

Its: CFO

Agreed to and accepted:

/s/ Ron Cohen

Dr. Ron Cohen

Date: 8/12/02

---

**Exhibit 10.6**

**ACØRDA**  
THERAPEUTICS

September 26, 2005

Dr. Ron Cohen  
246 Harriman Road  
Irvington, NY 10533

**Re: Amendment to August 11, 2002 Employment Agreement**

Dear Ron:

This letter serves as an amendment to your employment letter, dated August 11, 2002, with Acorda Therapeutics, Inc. (the “Agreement”), in accordance with paragraph 9(b) of the Agreement. Specifically, the Agreement is amended as follows, effective September 26, 2005:

1. **Base Salary.** Paragraph 2 of the Agreement is amended so that your base salary is Three Hundred Five Thousand Dollars (\$305,000) instead of Two Hundred Eighty Thousand Dollars (\$280,000).

2. **Equity Compensation.** Paragraph 5 of the Agreement is amended so that your equity compensation may be awarded in the form of stock options, stock appreciation rights, and/or restricted stock, rather than only in the form of stock options. In addition, paragraphs 6(b)(iii), 6(c)(iv), 6(d), 7(a), and 7(b)(iv) of the Agreement are amended so that all references to the vesting or acceleration of stock options shall include the vesting or acceleration (or the removal of all restrictions on) stock appreciation rights and restricted stock.

3. **Termination of Your Employment by the Company Without Cause or Voluntary Termination by You With Good Reason.** Paragraph 6(c)(i)-(iii) of the Agreement is amended to read in its entirety as follows:

**(c) Termination of Your Employment by the Company Without Cause or Voluntary Termination by You With Good Reason .**  
If the Company terminates your employment without Cause or if you terminate your employment with Good Reason the following shall apply:

- (i) The Company shall pay to you a single lump sum payment equal to the base salary you would have received during the fifteen-month period immediately following the date of your termination (the "Severance Period") had your employment not terminated. Such payment shall be made no later than thirty days following termination of employment. You shall be under no obligation to secure alternative employment during the Severance Period, and you will be entitled to retain this payment without regard to any subsequent employment you may obtain.
-

(ii) The Company shall also pay you a bonus equal to the last annual bonus you received multiplied by a fraction, the numerator of which shall be the number of days in the calendar year elapsed as of the termination date and the denominator of which shall be 365. Such payment shall also be made no later than thirty days following termination of employment.

(iii) If you or your eligible spouse and dependents timely elect COBRA Coverage, the Company shall pay the monthly premiums for such coverage during the Severance Period; provided that, if you elect coverage under a subsequent employer's group health insurance plan during the Severance Period, payment of such premiums shall cease. However, to the extent the Company cannot pay COBRA premiums for a period of time following your termination without subjecting you or your eligible spouse or dependents to the adverse tax consequences of Section 409A of the Internal Revenue Code, you or your eligible spouse or dependents will pay such COBRA premiums subject to being reimbursed by the Company at such time as the Company can reimburse those premiums consistent with the requirements of Section 409A.

Except as provided in this letter, the Agreement remains in full force and effect. If this amendment is acceptable, please sign and date the copy of this letter provided herewith and return it to me at your earliest convenience.

Sincerely,

Acorda Therapeutics, Inc.

By: /s/ David Lawrence

Name: David Lawrence

Title: Chief Financial Officer

Agreed to and accepted:

/s/ Ron Cohen

Ron Cohen

Date: September 26, 2005

---

**Exhibit 10.7**

**ACØRDA**  
THERAPEUTICS

VIA FACSIMILE

November 30, 2004

Mr. Mark R. E. Pinney  
42 West 15th Street #7  
New York, NY 10011

Dear Mark:

This letter will confirm the terms of your future compensation from Acorda Therapeutics, Inc. (the "Company") as recently approved by the Compensation Committee of the Company's Board of Directors and ratified by the Board.

In consideration of your years of service and continuing service to the Company, the Company has agreed to provide to you an extension until 90 days after you cease to be either a Director or a general advisor to the Company (with such advisor relationship to be incorporated into an advisory agreement with the Company for a period of at least 12 months in the event that you cease to be a Director) of: (1) your right to exercise Employee Stock Options that were granted to you and have vested on or prior to October 31, 2004 and (2) your Employee Restricted Share Awards that were granted to you and have vested on or prior to October 31, 2004. In addition, while you remain a Director or if you enter into an advisory agreement with the Company for specified services, you shall receive the continued vesting of some or all of the Employee Restricted Share Awards that were granted to you prior to October 31, 2004 or other suitable consideration to be agreed upon and approved by the Compensation Committee and Board of Directors.

If you are in agreement, please sign and date the copy of this letter provided herewith and return it to me at your first convenience.

Very truly yours,

Acorda Therapeutics, Inc.:

By: /s/ Ron Cohen

Ron Cohen  
President and CEO

Agreed to and accepted:

/s/ Mark Pinney

Mark Pinney

**Exhibit 10.8**

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

**EXECUTION COPY**

**Date: September 2003**

**ELAN CORPORATION, PLC.**

**AND**

**ACORDA THERAPEUTICS, INC.**

**AMENDED AND RESTATED LICENSE AGREEMENT**

---

## INDEX

- ARTICLE 1** **DEFINITIONS AND INTERPRETATION**
  - ARTICLE 2** **THE LICENSE**
  - ARTICLE 3** **DEVELOPMENT OF THE PRODUCT**
  - ARTICLE 4** **[NOT USED]**
  - ARTICLE 5** **FINANCIAL PROVISIONS**
  - ARTICLE 6** **REGISTRATION OF THE PRODUCT**
  - ARTICLE 7** **[NOT USED]**
  - ARTICLE 8** **WARRANTY AND INDEMNITY**
  - ARTICLE 9** **[NOT USED]**
  - ARTICLE 10** **COMMITTEE**
  - ARTICLE 11** **PATENTS**
  - ARTICLE 12** **SUNDY CLAUSES**
  - SCHEDULE 1** **ACORDA PATENT RIGHTS**
  - SCHEDULE 2** **ASSIGNMENT AGREEMENT**
  - SCHEDULE 3** **ELAN PATENT RIGHTS**
  - SCHEDULE 4** **NDA TIMELINE**
  - SCHEDULE 5** **RUSH/ACORDA LICENSE**
  - SCHEDULE 6** **RUSH PAYMENTS AGREEMENT**
  - SCHEDULE 7** **SPECIFICATIONS**
  - SCHEDULE 8** **SUPPLY AGREEMENT**
  - SCHEDULE 9** **TECHNOLOGY TRANSFER RESPONSIBILITES**
-

**THIS AMENDED AND RESTATED LICENSE AGREEMENT** is made as of the

day of September 2003

**BETWEEN:**

- (1) **Elan Corporation, plc.**, a public limited company incorporated under the laws of Ireland, and having its registered office at Lincoln House, Lincoln Place, Dublin 2, Ireland ("Elan"); and
- (2) **Acorda Therapeutics, Inc.**, a corporation organized under the laws of the State of Delaware and having its principal office at 15 Skyline Drive, Hawthorne, New York 10532, United States of America ("Acorda").

**RECITALS:**

- (A) As of April 21, 1998, Elan and Acorda entered into an amended and restated licence and supply agreement relating to SCI (effective as from January 23, 1997) (the "SCI Agreement");
- (B) Effective as of April 21, 1998, Elan, Acorda and MS R & D entered into a licence and supply agreement relating to MS (the "MS Agreement");
- (C) Pursuant to the Assignment Agreement (i) MS R & D assigned all of its rights, title, interest and obligations under the MS Agreement to Acorda, and Acorda assumed all of MS R & D's obligations thereunder; and (ii) Elan, Acorda and MS R & D terminated the MS R & D Agreements (as defined in the Assignment Agreement)
- (D) The Parties desire and agree that certain provisions of the SCI Agreement and the MS Agreement should be amended, clarified and restated to reflect the intentions of the Parties with respect to the development, manufacturing and marketing of the Product in the Territory for the Indications on the terms and conditions set out herein.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the Parties hereby agree that each of the MS Agreement and the SCI Agreement, and all of the terms, conditions and provisions of the MS Agreement and the SCI Agreement, are hereby superceded and replaced and restated in their entirety by this Agreement and the Supply Agreement and the terms, conditions and provisions hereof and thereof, as of the Amendment Date, as follows and as set forth in the Supply Agreement:

**ARTICLE 1 DEFINITIONS AND INTERPRETATION**

- 1.1. In the present Agreement and any further agreements based thereon between the Parties hereto, the following definitions shall prevail:

**“ Acorda Know-How ”** shall mean all knowledge, information, trade secrets, data and expertise relating to the Product which is not generally known to the public that is owned or possessed by Acorda (and/or its Affiliates), or that is developed by Acorda (and/or its Affiliates) during the term of this Agreement relating to the Product, including clinical data, whether or not covered by any patent, copyright, design, trademark or other industrial or intellectual property rights and excluding Elan Intellectual Property. Title to all inventions and other intellectual property made solely by Acorda employees in connection with the Project shall be owned by Acorda.

**“ Acorda Patent Rights ”** shall mean any and all rights under any and all patents and patent applications now existing, currently pending or hereafter filed, owned or acquired or licensed by Acorda (and/or its Affiliates) from a Third Party which would be infringed by the manufacture, use or sale of the Product, the current status of which is set forth in **Schedule 1**. Acorda Patent Rights shall also include all continuations, continuations-in-part, divisionals and re-issues of such patents and patent applications and any patents issuing thereon and extensions of any patents licensed hereunder. Acorda Patent Rights shall further include any patents or patent applications covering any improved methods of making or using the Product invented or acquired by Acorda (and/or its Affiliates) from a Third Party during the term of this Agreement, and under which Acorda (and/or its Affiliates) has a right to grant a licence hereunder. Acorda Patent Rights shall exclude Elan Intellectual Property.

**“ Act ”** shall mean the United States Federal Food Drug and Cosmetic Act of 1934, and the rules and regulations promulgated thereunder, or any successor act, as the same shall be in effect from time to time.

**“ Affiliate ”** shall mean any corporation or entity controlling, controlled by or under the common control of Elan or Acorda as the case may be. For the purpose of this Agreement, “control” shall mean the direct or indirect ownership of at least fifty percent (50%) of the outstanding shares or other voting rights of the subject entity to elect directors, or if not meeting the preceding criteria, any entity owned or controlled by or owning or controlling at the maximum control or ownership right permitted in the country where such entity exists.

**“ Agreement ”** shall mean this amended and restated license agreement (which expression shall be deemed to include the Recitals and Appendices and Schedules hereto).

**“ Alternate Compound ”** shall mean any mono- or di-aminopyridine, other than the Compound, as well as the isomers, and the salts thereof.

**“ Amendment Date ”** shall mean September 2003.

**“ API ”** shall mean any Compound or Alternate Compound, in bulk form, for use as an active ingredient in the manufacture of Product.

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk \*, have been separately filed with the Commission.

**“Assignment Agreement”** shall mean the Termination and Assignment Agreement entered into by and among Acorda, Elan and MS R & D as of the Amendment Date, a copy of which is attached hereto as **Schedule 2**.

**“Cardinal Agreement”** shall mean the Laboratory Services Agreement by and between Cardinal Health PTS, Inc. (“Cardinal”) and Acorda dated April 1, 2003 relating to stability testing of oral tablets of Fampridine.

**“cGCP”, “cGLP” and “cGMP”** shall mean current Good Clinical Practises, current Good Laboratory Practises and current Good Manufacturing Practises, respectively, pursuant to the Act and FDA guidance documents.

**“CMC Section”** shall mean the chemistry, manufacturing, and controls section of an NDA as defined in 21 CFR Section 314.50 (1) and its equivalent in other registration applications.

**“Committee”** shall mean the committee to be established pursuant to Article 10.

**“Competition”** shall mean on a country by country basis the sale or distribution by a Third Party of a sustained release oral pharmaceutical formulation of a mono- or di-aminopyridine active agent for administration on a once or twice daily basis for the treatment or amelioration of any neurological condition(s) (including neurogenic conditions) in humans, where the sales or distribution of such formulation by said Third Party for a calendar year are at least [\*\*] of the total sales of the Product in such country in such calendar year expressed in equivalent units. The determination that Competition exists in any country in any calendar year shall be deemed conclusively if a mutually agreed reputable organization such as IMS has made such determination based on its conduct of a market share study in such country during such year, provided the existence of such level of sales of competing products may also be established by other reasonable evidence. Once a determination is made that Competition exists for a Product in any country, such determination shall be made again by the Parties each calendar year for so long as the Product is marketed in that country; provided that in the event that Competition has ceased prior to the end of a calendar year and has not resumed, the Competition shall be deemed to have terminated for such year.

**“Compound”** shall mean the compound known as 4-aminopyridine as well as the isomers, and the salts thereof.

**“Confidential Information”** shall mean (i) any proprietary or confidential information or material in tangible form disclosed hereunder that is marked as “Confidential” at the time it is delivered to the receiving Party, or (ii) proprietary or confidential information disclosed orally hereunder which is identified as confidential or proprietary when disclosed and such disclosure of confidential information is confirmed in writing within thirty (30) days by the disclosing Party.

**“Designee”** shall mean a sub-licensee, distributor or any other Third Party authorised by Acorda including those entities or persons appointed by Acorda pursuant to the provisions of Article 2.3.1.

**“Development Plan ”** shall have the meaning set forth in Article 3.1.

**“ DMF ”** shall mean a Drug Master File, as defined in 21 CFR Section 314.420, as the same may be amended or re-promulgated from time to time, or any successor filing or procedure and/or its equivalent in the other countries of the Territory.

**“ Dominating Patent ”** shall mean an unexpired patent that has not been invalidated by a court or governmental agency which is owned by a Third Party, which covers the Product sold by Acorda or its Designees, under circumstances such that Acorda, including on behalf of its Designees, has no commercially reasonable alternative to obtaining a royalty-bearing licence under such patent in order to practise or exploit the Elan Intellectual Property to develop and/or commercialise the Product.

**“ EDDI ”** shall mean Elan Drug Delivery Inc., a wholly-owned subsidiary of Elan, and the successor to Elan Pharmaceutical Research Corp.

**“ Elan Intellectual Property ”** shall mean the Elan Patent Rights and/or the Elan Know-How.

**“ Elan Know-How ”** shall mean all knowledge, information, trade secrets, data and expertise within Elan’s oral controlled release technology relating to the Product which is not generally known to the public that is owned or possessed by Elan (and/or its Affiliates), or to be developed by Elan (and/or its Affiliates), whether before or during the term of this Agreement, whether or not covered by any patent, copyright, design, trademark or other industrial or intellectual property rights, or developed by or on behalf of Elan (and/or its Affiliates) in connection with the Project, or developed by or on behalf of Elan (and/or its Affiliates) pursuant to the Axogen Agreement. Title to all inventions and other intellectual property made solely by employees of Elan in connection with the Project shall be owned by Elan.

Elan Know-How shall exclude:

- (a) any and all know how as of the Amendment Date pertaining to the development or manufacture of transdermal formulations of the Compound and/or other mono- or di-aminopyridines, isomers and salts thereof, other than US patents numbers 5,370,879, 5,540,938 and/or 5,580,580, and any foreign equivalents, divisionals, reissues or continuations and any patents issued thereon, and the know-how described therein; and
- (b) nanoformulation technology to the extent specifically licensed by Elan to Merck pursuant to the Merck Agreement for Indications other than MS or SCI.

**“ Elan Patent Rights ”** shall mean any and all rights under any and all patents and patent applications now existing, currently pending or hereafter filed, owned or acquired or licensed by Elan (and/or its Affiliates) which would be infringed by the manufacture, use or sale of the Product, the current status of which as of the Amendment Date is set forth in **Schedule 3**. Elan Patent Rights shall also include all continuations, continuations-in-part, divisionals and re-issues of such patents and patent applications and any patents

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

issuing thereon and extensions of any patents licensed hereunder. Elan Patent Rights shall further include any patents or patent applications covering any improved methods of making or using the Product invented or acquired by Elan (and/or its Affiliates) during the term of this Agreement and under which Elan (and/or its Affiliates) has a right to grant a licence hereunder, and Elan's (and/or its Affiliates) interest in any intellectual property conceived reduced to practice or otherwise developed in connection with the Project.

**“EMEA”** shall mean the European Agency for the Evaluation of Medicinal Products based in London (UK), as established by Council Regulation n° 2309/93 of July 22, 1993, as subsequently amended by Commission Regulation 649/98 of March 23, 1998.

**“End of Phase 2 Meeting”** shall mean the first end of Phase 2 meeting with the FDA, as defined in 21 CFR Section 312.47, intended to determine the safety of proceeding to Phase 3, evaluate the Phase 3 plan and protocols and identify any additional information necessary to support an NDA for Product.

**“ExW”** and **“Ex Works”** shall have the meaning as such term is defined in the ICC Incoterms, 2000, International Rules for the Interpretation of Trade Terms, ICC Publication No. 560.

**“Fampridine Product”** shall mean any finished pharmaceutical oral sustained release dosage form containing the Compound, which is in the scope of one or more Valid Claims within the Elan Patent Rights in the country of sale, and/or incorporates Elan Know-How in material part. The use of the pre-clinical, toxicological, pharmacokinetic, metabolic, formulation, methods, clinical protocols and data developed for and on behalf of Elan, which is included in the Elan Know-How shall constitute incorporation of the Elan Know-How in material part.

**“FDA”** shall mean the United States Food and Drug Administration or any other successor agency, whose approval is necessary to market the Product in the United States of America.

**“First Commercial Sale”** shall mean the first In Market sale of Product in any country by Acorda or an Acorda Designee for end use or consumption, after all required Regulatory Approvals have been granted by the governing health authority of such country.

**“FTE”** means Elan's full time equivalent charging rate for its appropriate employees or consultants from time to time (based on cost without mark-up) which as of the Amendment Date is US[\*\*\*] per day.

**“GAAP”** shall mean generally accepted accounting principles in the United States consistently applied.

**“IND”** shall mean the investigational new drug application and any amendments thereto for the Product filed with the FDA including IND numbers [\*\*\*\*].

**“Indication”** shall mean any use or indication of Product for treatment of any condition, including SCI and MS.

**“Initial Period”** shall have the meaning set forth in Article 12.5.1.1.

**“In Market”** shall mean the sale of the Product, whether by Acorda or its Designee, to an unaffiliated Third Party such as a wholesaler, distributor, managed care organisation, hospital or pharmacy and shall exclude the transfer pricing of the Product by Acorda to an Affiliate.

**“Joint Invention”** shall mean all inventions and other intellectual property made jointly by employees of Acorda and Elan in connection with the Project, which inventions and intellectual property shall be jointly owned by Elan and Acorda.

**“Launch Stocks”** shall have the meaning set forth in the Supply Agreement.

**“License Revenues”** shall mean the monetary amount or non cash consideration (exclusive of any taxes or duties that Acorda may be required by law to pay, but not including income, corporation or similar taxes) paid to Acorda for the granting to any Third Party any of the rights granted to Acorda under this Agreement and shall further include any other on going fees paid to Acorda in respect of such rights, but shall exclude bona fide research or development fees and payments received by Acorda and any payments received by Acorda for the sale of the Product from Elan pursuant to the provisions of Article 2.11.3. For the avoidance of doubt, it is understood and agreed that License Revenues shall not include and Elan shall not be entitled to receive any share of payments received from a Third Party for the purchase of equity in Acorda, debt financing, the licence of intellectual property other than the Elan Intellectual Property, rights to products other than the Product or the reimbursement of patent or other expenses incurred by Acorda; provided that License Revenues shall include and Elan shall be entitled to receive any share of payments received from a Third Party for the purchase of equity in Acorda where such payments or a portion thereof are referable to the granting of rights to the Elan Intellectual Property for the Product. The fact that a premium is paid by a Third Party for the purchase of equity in Acorda shall not of itself mean that the premium is referable to the granting of rights to the Elan Intellectual Property for the Product. For the avoidance of doubt, the Parties hereby confirm that the definition of License Revenues does not include royalties calculated as a percentage of NSP or of net In Market sales payable in each case by Designees to Acorda.

**“Major European Markets”** shall mean each of the United Kingdom, France, Germany and Italy.

**“Manufacturing Cost”** shall have the same meaning as in the Supply Agreement.

**“Merck Agreement”** shall mean the Technology Transfer and License Agreement dated 26 July 1999 between Merck & Co. Inc. (“Merck”), Elan, Elan Pharmaceutical Research Corp. (now EDDI) and Elan Pharma International Limited.

**“MS”** shall mean multiple sclerosis.

**“ MS Field ”** shall mean use as an oral prescription medicine for the treatment of MS in humans.

**“ MS R & D ”** shall mean MS Research and Development Corporation, a Delaware corporation, having an office at 15 Skyline Drive, Hawthorne, New York 10532 USA.

**“ MS Term ”** shall mean shall mean the period beginning on 21 April 1998 and ending upon expiry or termination of this Agreement, howsoever arising.

**“ NDA ”** shall mean the new drug application as defined in the Act and applicable regulations promulgated thereunder including any supplements or amendments thereto, which Acorda may file for the Product with the FDA.

**“ NDA Approval ”** shall mean the final approval to market the Product by the FDA as defined under the Act.

**“ NDA Equivalent ”** shall mean any new registration application or submission including any supplements or amendments thereto, such as a foreign counterpart to the NDA, which Acorda may file for the Product with any regulatory authority in any regulatory jurisdiction in the Territory other than the United States that is required to obtain Regulatory Approval in such jurisdiction.

**“ NDA Timeline ”** shall mean the development and regulatory timeline attached hereto as **Schedule 4**.

**“ Notional NSP ”** shall mean the estimated NSP of Product at the applicable time, which shall on a country-by-country basis be provided by Acorda to the Committee within ninety (90) days prior to commencement of each calendar year (or, for the Launch Year in any country, within ninety (90) days prior to the estimated date of First Commercial Sale in such country); provided, that:

- (a) for (i) the Launch Year and (ii) if no Statement is due to be produced prior to ninety (90) days prior to the estimated date of First Commercial Sale in such country, the Notional NSP shall be estimated in good faith; and
- (b) in each subsequent year, Notional NSP shall be calculated by reference to the average NSP in that country as evidenced by the last four Statements (or such lesser number of Statements as have actually been produced in relation to that country).

**“ NSP ”** shall mean that sum determined by deducting from the gross amount billed, however characterized, for the Product, commencing on the date of First Commercial Sale and sold In Market by Acorda or an Acorda Designee, the following:

- (a) transportation charges or allowances, including freight pick-up allowances, and packaging costs, if any;

- (b) trade, quantity or cash discounts, service allowances and independent broker's or agent's commissions, if any, allowed or paid;
- (c) credits or allowances, if any, given or made on account of price adjustments, returns up to ten per cent (10%) of gross sales, off-invoice promotional discounts, rebates, any and all national, federal, state or local government rebates, whether in existence now, or enacted at any time during the term of this Agreement, rejections, recall or Product destruction (voluntarily made or requested or made by an appropriate government agency sub-division or department) for the Product; and
- (d) any duty, tariff or tax (other than income or corporation tax), excise or governmental charge upon or measured by the production, import, export, sale, transportation, delivery, or use of the Product.

In the event that Acorda or its Designee shall sell the Product together with other products to third parties in a particular country and the price attributable to the Product is less than the average price of "arms length" sales of the Product alone in the particular country for the reporting period in which sales occur (such sales to be excluded from the calculation of the average price of "arms length" sales), NSP for any such sales shall be the average price of "arms length" sales by Acorda or its Designee of the Product alone and in the country during the reporting period in which such sales occur. If the average price of "arms length" sale of the Product cannot be determined in any given country, the NSP will be determined by the value of the Product sold to similar customers in countries with similar pricing and reimbursement structures and for similar quantities. Any dispute as to the determination of fair market value that cannot be resolved through discussion between the Parties shall be determined by an independent arbitrator in accordance with the provisions of Article 12.14.

**" Other Indication Field "** shall mean use as a prescription medicine for the treatment of any condition in humans, excluding the SCI Field and the MS Field, but for the avoidance of doubt including the treatment of SCI and/or MS otherwise than orally.

**" Other Indication Term "** shall mean the period beginning on the Amendment Date and ending upon expiry or termination of this Agreement, howsoever arising.

**" Party "** shall mean Acorda or Elan, as the case may be.

**" Parties "** shall mean Acorda and Elan.

**" Patheon Agreement "** shall mean the Technical Transfer Program Proposal for Commercial Registration entered into by and between Patheon, Inc. ("Patheon") and Acorda dated as of February 26, 2003 relating to the manufacturing of Fampridine tablets.

**" Phase 3 Clinical Study "** shall mean a clinical trial conducted after an End of Phase 2 Meeting and conducted on a sufficient number of patients that is designed to establish that the Product is safe and efficacious for its intended Indication and is intended to

define warnings, precautions and adverse reactions that are associated with Product in the dosage range and formulation to be prescribed, and to support Regulatory Approval of Product for such Indication.

**“Product”** shall mean any finished pharmaceutical dosage form containing the Compound or an Alternate Compound, which is in the scope of one or more Valid Claims within the Elan Patent Rights in the country of sale, and/or incorporates Elan Know-How in material part. The use of the pre-clinical, toxicological, pharmacokinetic, metabolic, formulation, methods, clinical protocols and data developed for and on behalf of Elan (except for tests and studies conducted by or on behalf of Acorda as contemplated by this Agreement), which is included in the Elan Know-How shall constitute incorporation of the Elan Know-How in material part.

**“Project”** shall mean all activity undertaken by Elan and Acorda in order to develop the Product in accordance with the Development Plan, together with (i) all activity as undertaken by Elan and Acorda to develop the Fampridine Product for SCI prior to the Amendment Date, and (ii) all activity as undertaken by Elan, Acorda and MS R & D to develop the Fampridine Product for MS, prior to the Amendment Date.

**“Regulatory Approval”** shall mean (i) NDA approval by the FDA in the United States of America, (ii) in the case of the Major European Markets, approval of the NDA Equivalent by the EMEA in the Major European Markets (and/or the applicable regulatory authorities in such Major European Market not failing to provide or rejecting such approval), or (iii) such approvals as are required in any other country of the Territory to launch the sale of the Product in the normal course of business, as applicable, in each case including any required pricing and reimbursement approvals.

**“Research and Development Cost”** shall mean in the case of research and development being conducted by or on behalf of Elan in connection with the Project the costs thereof calculated in accordance with GAAP.

**“Rush”** shall mean Rush-Presbyterian-St. Luke’s Medical Center.

**“Rush/Acorda License”** shall mean the License Agreement entered into as of the Amendment Date by and between Rush and Acorda, and any amendments or supplements thereto, the form of which, including the schedules thereto, is attached hereto as **Schedule 5**.

**“Rush Payments Agreement”** shall mean the Rush Payments Agreement entered into as of the Amendment Date by and between Elan and Acorda, and any amendments or supplements thereto, in connection with the Rush/Acorda License, a form of which is attached hereto as **Schedule 6**.

**“Rush Side Agreement”** shall mean the Side Agreement entered into as of the Amendment Date by and between Rush, Acorda, Elan and EDDI, and attached as a schedule to the Rush/Acorda License, and any amendments or supplements thereto.

**“SCI”** shall mean spinal cord injury indications.

“**SCI Field**” shall mean use as an oral prescription medicine for the treatment of SCI in humans.

“**SCI Term**” shall mean the period beginning on 23 January 1997 and ending upon expiry or termination of this Agreement, howsoever arising.

“**SEC**” shall mean the United States Securities and Exchange Commission or any successor agency thereto.

“**Specifications**” shall mean the specifications for the Product(s) and API attached as **Schedule 7**, as they may be modified from time to time by mutual written agreement of the Parties consistent with the specifications approved by the FDA in the NDA and, outside the United States, any NDA Equivalent.

“**Supply Agreement**” shall mean the supply agreement between Elan and Acorda of even date herewith, in the form attached hereto as **Schedule 8**.

“**Technology Transfer Responsibilities**” shall mean the respective responsibilities of each of Acorda and Elan in connection with the Project relating, as applicable, to the (i) activities being conducted under the Cardinal Agreement; (ii) activities being conducted under the Patheon Agreement, and (iii) procurement of API, as set forth on **Schedule 9** hereto, as such responsibilities may be modified from time to time by mutual agreement of the Parties.

“**Territory**” shall mean all of the countries of the world.

“**Third Party(ies)**” shall mean a person or entity who or which is neither a Party nor an Affiliate of a Party.

“**Trademark**” shall mean the trademark(s) as may be selected by Acorda which has been or may be registered by Acorda in one or more countries of the Territory.

“**Valid Claim(s)**” shall mean a claim in any patent within the Elan Patents which has not lapsed or become abandoned and which claim has not been declared invalid by an unreversed or an unappealable decision of a court of competent jurisdiction.

“**\$**” and “**US\$**” shall mean United States Dollars.

## 1.2. In this Agreement

1.2.1 the singular includes the plural and vice versa, the masculine includes the feminine and vice versa and references to natural persons include corporate bodies, partnerships and vice versa;

1.2.2 any reference to an Article, Exhibit or Schedule shall, unless otherwise specifically provided, be to an Article, Exhibit or Schedule of this Agreement;

- 1.2.3 the headings of this Agreement are for ease of reference only and shall not affect its construction or interpretation; and
- 1.2.4 the expressions “include”, “includes”, “including”, “in particular” and similar expressions shall be construed without limitation.

## ARTICLE 2 THE LICENSE

### 2.1. License Grant :

Elan shall remain proprietor of all the Elan Intellectual Property relating to the Product and any trademark licensed by Elan to Acorda, (such as an acronym for the applicable technology applied to the Product), but hereby grants to Acorda an exclusive (even as to Elan) licence under the Elan Intellectual Property in the Territory to package, use, import, export, promote, distribute, offer for sale, sell and otherwise exploit and, solely as permitted in the Supply Agreement, to make and have made:

- 2.1.1 the Fampridine Product in the SCI Field for the SCI Term;
- 2.1.2 the Fampridine Product in the MS Field for the MS Term; and
- 2.1.3 without prejudice to Articles 2.1.1 and 2.1.2, the Product in the SCI Field, MS Field and/or Other Indication Field for the Other Indication Term, subject to any contractual obligations of Elan under the Merck Agreement with respect to a formulation using Nanoformulation technology (as defined in the Merck Agreement) in the Other Indication Field.

in each case under the terms and conditions set out herein.

### 2.2. Acceptance; Acorda Non-Competition :

Subject to the provisions of the following sentence, Acorda hereby accepts such licence and confirms that Acorda and its Affiliates will not directly or indirectly market as a prescription medicine any other sustained release oral dosage form or transdermal form, containing the Compound or any other mono-or di-aminopyridine active agent, other than Product (“**Acorda Competing Product**”) during the period Acorda retains a licence under the Agreement and for one year thereafter.

Should Acorda or its Affiliates market an Acorda Competing Product in the countries of the European Economic Area, Elan reserves as its sole remedy the right to terminate the exclusive licences granted to Acorda solely in the applicable country (ies) in which Acorda or its Affiliates market an Acorda Competing Product, which thenceforth for the remainder of the term of this Agreement shall become non-exclusive in nature in such countries of the European Economic Area, and to stop licensing improvements in such countries of the European Economic Area.

2.3.

Sub-licensing :

- 2.3.1 Acorda may sub-license or otherwise authorise one or more third parties (each a Designee) to use, import, offer for sale, promote, distribute, sell and otherwise exploit the Product in one or more countries of the Territory (but not the rights to manufacture the Product which may only be sub-licensed in accordance with the provisions of the Supply Agreement). In circumstances where the third party is entitled to, or is likely to be able to obtain, access to the CMC Section, the prior written consent of Elan shall be obtained to any sub-licence or other agreement permitted by this Article 2.3.1 which consent shall not be unreasonably withheld or delayed. In the event that the Third Party is entitled to access to Confidential Information disclosed by Elan to Acorda, the agreement between the Third Party and Acorda shall contain obligations of confidentiality no less onerous than those set out in this Agreement. Elan shall be furnished with a copy of the proposed and the executed sub-licence or other agreement contemplated by this Article 2.3.1 Any sub-licence or other agreement permitted by this Article 2.3.1 shall be subject to the terms of this Agreement, but excluding the right to grant a sub-licence. Acorda shall use its reasonable endeavours to ensure that Elan shall have the same rights of audit and inspection vis a vis a Designee, as Elan has pursuant to this Agreement concerning Acorda. A sub-licence may be granted by Acorda without any obligation upon the Designee to pay to Acorda or Elan any amounts other than those set out in this Agreement.
- 2.3.2 Insofar as the obligations owed by Acorda to Elan are concerned, Acorda shall remain responsible for all acts and omissions of any Designee as if such acts and omissions were by Acorda. Any sub-licence or other agreement permitted by Article 2.3.1 shall automatically and immediately terminate on termination of this Agreement.
- 2.3.3 For the avoidance of doubt, the Parties hereby confirm that In Market sales of the Product by any Designee shall constitute sales by Acorda for the purposes of Article 5.6.

2.4.

Use of Data and Improvements :

Subject to the provisions of Article 12.1 Elan may use the Elan Intellectual Property and all technical and clinical data or improvements generated by Elan pursuant to this Agreement in connection with Elan's commercial arrangements for the Product in any country which ceases to be a part of the Territory, or in relation to the Product in the Territory in the event of the termination of this Agreement.

2.5.

Rush:

Each of Elan and Acorda hereby acknowledges and agrees that the licences previously granted to Elan by Rush and the licenses granted to Acorda by Rush pursuant to the Rush/Acorda License do not constitute Elan Patent Rights or Elan Know-How for the purposes of this Agreement.

2.6. Technical Advice:

Without prejudice to Article 5.1.2, Elan shall, if requested, advise Acorda in any technical matters as may become necessary for the proper utilisation of the licence to Acorda pursuant to this Agreement and shall provide reasonable advice and assistance to Acorda with respect thereto without additional charge.

2.7. Combination Products :

In the event that Acorda wishes to develop, market and sell an oral sustained release product for the treatment of SCI which contains the Compound or an Alternate Compound as one of two or more pharmaceutically active ingredients (“ **Combination Product** ”), Acorda shall seek the consent of Elan to extend the licences granted by Elan to Acorda pursuant to this Agreement, which consent shall not be unreasonably withheld or delayed. In the event that such consent is furnished, the Parties shall negotiate in good faith the terms of an agreement, including where applicable, such amendments as are appropriate to this Agreement.

2.8. Elan Competing Product :

For the term of the Agreement, Elan shall not itself or through an Affiliate or Third Party commercialise or, develop in the Territory nor license another party in the Territory to commercialise or develop any other sustained release oral dosage form for prescription use in humans which contains the Compound or any Alternate Compound as an active ingredient for:

- 2.8.1 the indication of SCI; and/or
- 2.8.2 the indication of MS; and/or
- 2.8.3 any other Indications, subject, during the term of the Merck Agreement, to any contractual obligations of Elan under the Merck Agreement with respect to a formulation using Nanoformulation technology (as defined in the Merck Agreement).

(each, an “ **Elan Competing Product** ”).

2.9. Trademark:

- 2.9.1 Acorda shall market the Product in the Territory under a Trademark, whether during the Initial Period or thereafter, which Trademark will be owned by Acorda.
- 2.9.2 Elan grants to Acorda a non-exclusive royalty free licence in the Territory solely for use in connection with the sale of the Product, for the term of this Agreement to use any trademark which relates to the Elan technology applicable to the Product (“ **Elan Trademark** ”), such as an acronym for the applicable technology applied to the Product, on the following terms:
  - 2.9.2.1 Acorda shall as soon as it becomes aware of any infringement give to Elan in writing full particulars of any use or proposed use by any other person, firm or company of a trade name or trademark or mode

or promotion or advertising which amounts to or might amount either to infringement of Elan's rights in relation to the Elan Trademark or to passing off.

- 2.9.2.2 If Acorda becomes aware that any other person, firm or company alleges that the Elan Trademark is invalid or that the use of the Elan Trademark infringes any rights of another party or that the Elan Trademark is otherwise attacked or attackable, Acorda shall immediately give to Elan full particulars in writing thereof and shall make no comment or admission to any Third Party in respect thereof.
- 2.9.2.3 Elan shall have the right to conduct all proceedings relating to the Elan Trademark and shall in its sole discretion decide what action, if any, to take in respect of any infringement or alleged infringement of the Elan Trademark or passing-off or any other claim or counter-claim brought or threatened in respect of the use or registration of the Elan Trademark. Any such proceedings shall be conducted at Elan's expense and for its own benefit.
- 2.9.2.4 At no time during or after the term of this Agreement shall Acorda challenge or assist others to challenge the Elan Trademark, or the registration thereof or attempt to register any trademarks, marks, or trade names confusingly similar to the Elan Trademark.
- 2.9.3 Acorda shall not be obliged to use the Elan Trademark to identify the Product but at Elan's request shall be obliged to use the Elan Trademark to identify the applicable Elan technology embodied in the Product. For the avoidance of doubt, the Parties hereby confirm that Acorda shall not be entitled to a licence to use any trademark owned or controlled by Elan which identifies a product, including Neurelan®.
- 2.10. When packaged, and to the extent permitted by law, a product label shall include an acknowledgement that the Product is made under licence from or, if applicable, manufactured by Elan. Such acknowledgement shall take into consideration regulatory requirements and Acorda's commercial requirements, including any requirement to state that Product is manufactured by Patheon. Acorda shall wherever possible give due acknowledgement and recognition to Elan in all printed promotional and other material regarding the Product such as stating that the Product is under licence from, or if applicable, manufactured by, Elan. Acorda shall consult with and obtain the approval of Elan as to the format and content of the promotional and other material insofar as it relates to a description of, or other reference to, the application of the Elan Intellectual Property. It shall be presumed that Elan approved of such use unless Elan provides written notice of disapproval of such use to Acorda within thirty (30) days of delivery of such materials to Elan, such approval not to be unreasonably withheld. The further consent of Elan shall not be required where the format and content of such materials is

substantively materially similar as the materials previously furnished to and approved by Elan.

2.11. Diligence :

- 2.11.1 Acorda shall use reasonable efforts consistent with the reasonable standard as would be applied by a bio-pharmaceutical company of similar size, stage of development and assets for a product of the market size and potential of the Product to market and promote the Product throughout the Territory.
- 2.11.2 Acorda shall effect a national commercial launch of the Product in the United States of America within one hundred and eighty (180) days of NDA Approval, provided that Acorda shall have received the agreed quantities of Launch Stocks ordered pursuant to firm purchase orders at least sixty (60) days in advance of the launch date. It is agreed that with respect to Japan and the Major European Markets, Acorda will effect a national commercial launch of the Product within one hundred and eighty (180) days after the necessary Regulatory Approvals, provided that Acorda shall have received the agreed quantities of Launch Stocks ordered pursuant to firm purchase orders pursuant to the Supply Agreement at least sixty (60) days in advance of the projected launch date. In the event that Acorda shall have received the agreed quantities of Launch Stocks ordered pursuant to firm purchase orders pursuant to the Supply Agreement at least sixty (60) days in advance of the projected launch date and Acorda does not make a national commercial launch in one or more of the countries listed above within the one hundred and eighty (180) day period, or such longer period permitted by the provisions of this Article 2.11.2, the licences granted to Acorda hereunder shall with thirty (30) days notice from Elan terminate in the applicable country and Elan shall be entitled to a licence to the Acorda Patent Rights and the Acorda Know-How in the applicable country on the terms set out in Article 2.11.3 and to the Trademark on the terms set out in Article 2.9. Notwithstanding the above, in the event that the Parties disagree whether or not Acorda has satisfied its obligations under this Agreement in any country listed above, the matter may be submitted to arbitration by either Party, and Acorda's rights and licences shall remain in effect until and unless the arbitrator makes a decision that Acorda's right and licence in such country should terminate.
- 2.11.3 Acorda will use commercially reasonable efforts to file and obtain registration approval in the United States of America, the Major European Markets and Japan as soon as practicable. In the event of any failure by Elan to perform its obligations under this Agreement or under the Supply Agreement which results in Acorda's failure to obtain such a Regulatory Approval or any delay thereof, the Parties through the Committee shall make reasonable and appropriate adjustments to the period in which Acorda shall have to file to obtain the applicable Regulatory Approval. If (x) Acorda fails to file to obtain a Regulatory Approval to commercialise the Product in the United States of America, Japan or the Major European Markets within a commercially reasonable time after completion and receipt of positive data from all pre-

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

clinical and clinical studies required for the related NDA or any NDA Equivalent, as determined by the Committee, or (y) Acorda fails to effect a commercial launch of the Product in the United States of America, Japan or the Major European Markets within the period specified in Article 2.11.2 above then, in such event, provided that Elan has terminated Acorda's licence as provided in Article 12.5.2.2, Acorda shall, at the option of Elan, license, make available and transfer to Elan all of Acorda's data, information, applications, approvals and filings to permit Elan to commercialise the Product in the applicable region, in exchange for an initial payment equal to Acorda's costs of developing such data, information, applications, approvals and filings for such region and [\*\*\*\*\*] of NSP (for which purpose the definition of NSP as set out in Article 1 shall apply mutatis mutandis) of the Product by Elan and/or its designees (for which purpose the definition of Designee as set out in Article 1 shall apply mutatis mutandis) in such region. In such event Elan shall be entitled to a licence to the Acorda Patent Rights and the Acorda Know-How to commercialise the Product on the terms set out in this Article 2.11.3 and to the Trademark on the terms set out in Article 2.9. In the event that Elan is entitled to such licence, the Parties shall enter into a further written licence agreement which shall include customary and reasonable terms relating to, inter alia, the timing of royalty payments to Acorda, reporting obligations regarding net sales, audit rights of Acorda with respect to books and records relating to net sales, sublicense and indemnity provisions, which obligations shall, unless otherwise agreed by the Parties, be substantially similar to those in this Agreement with respect to commercialisation of the Products by Acorda.

#### 2.11.4

- 2.11.4.1 Acorda will use its commercially reasonable efforts to obtain Regulatory Approval to commercialise the Product in the other countries of the Territory that it selects, having regard to the effort and expenditure required to obtain Regulatory Approval for the Product and the commercial opportunities for the Product in such other countries of the Territory.
- 2.11.4.2 In the event that the Parties disagree whether Acorda has satisfied its obligations under Article 2.11.4.1, with regard to one or more of such other countries of the Territory, the matter may be submitted to the Committee, and if not resolved by the Committee, by arbitration, by either Party, and Acorda's rights and licences shall remain in effect until and unless the arbitrator makes a decision that Acorda's right and licence hereunder in such country should terminate.
- 2.11.4.3 If Acorda (a) indicates to Elan that it does not intend to file to obtain Regulatory Approval and commercialise the Product in a particular country or countries of the Territory, or (b) fails to commence commercialisation in any country in the Territory (other than the United States, the Major European Markets {or, if

commercialization has commenced in the Major European Markets, any other country subject to the jurisdiction of the EMEA, provided that Acorda provides to the Committee a marketing plan for such other countries} or Japan), within one hundred and (180) days after receiving the required Regulatory Approval therefor, provided that Acorda shall have ordered and received the agreed quantities of Launch Stocks ordered pursuant to firm purchase orders pursuant to the Supply Agreement at least sixty (60) days in advance of the projected launch date, Elan shall be entitled to a licence to the Acorda Patent Rights and the Acorda Know-How to commercialise the Product in such countries on the terms set out in Article 2.11.3 and to the Trademark on the terms set out in Article 2.9.

### **ARTICLE 3 DEVELOPMENT OF THE PRODUCT**

- 3.1. Subject to the provisions of this Article 3, Acorda shall use its reasonable efforts, as would be deemed commensurate with the achievement of its own business aims for a similar product of its own to conduct such part of the Project as the Parties mutually agree shall be conducted by Acorda. Subject to the provisions of this Article 3, Elan shall use its reasonable efforts, as would be deemed commensurate with the achievement of its own business aims for a similar product of its own, to conduct such part of the Project as the Parties mutually agree that shall be conducted by Elan. The allocation between the Parties of their respective responsibilities for conducting parts of the Project (i) is set forth in **Schedule 9 - Technology Transfer Responsibilities**, and (ii) shall be set forth in a development plan (the “**Development Plan**”) to be prepared and updated from time to time by Acorda in consultation with Elan, relating to the development of the Product, the current form of which is attached as **Schedule 4 - NDA Timeline**, and the Committee shall monitor the progress of such activities. Elan and Acorda each undertake that it shall carry out the respective studies, testing and activities set forth as Technology Transfer Responsibilities, in the Development Plan, and otherwise undertaken and conducted by it in good faith and in accordance with prevailing cGCP and cGLP and FDA standards and guidelines.
- 3.2. Provided that Elan uses reasonable endeavours to meet its obligations under this Agreement, Elan shall have no liability to Acorda as a result of any failure or delay of the Product to achieve one or more of the milestones set out in the Project and/or to obtain the NDA Approval or the approval of the regulatory authorities in one or more of the other countries of the Territory. Acorda shall have no liability to Elan as a result of any failure or delay of the Product to obtain the NDA Approval or the approval of the appropriate health regulatory authorities in one or more of the countries of the Territory.
- 3.3. The Parties hereby confirm that each shall undertake its respective part of the Project as a collaborative effort and that the provisions of this Agreement requires that each Party diligently carries out those tasks assigned to it under the Project and as otherwise agreed during the course of the Project. Each Party shall co-operate with the other in good faith particularly with respect to unknown problems or contingencies and shall perform its

obligations in good faith and in a commercially reasonable, diligent and workmanlike manner. Each Party will update the other Party on the progress of the Project at meetings of the Committee.

- 3.4. Elan will supply Acorda with Acorda's reasonable requirements of Product including clinical trial supplies to enable Acorda to carry out the Project. The Product shall be supplied by Elan EXW at Manufacturing Cost.
- 3.5. Acorda agrees to carry out and complete the Phase III programme in the United States of America to a standard and timeframe that a company of comparable size, stage of development and assets would use for a product of similar size and potential as the Product.
- 3.6. With respect to generating stability data on the oral Product in bulk tablet form, Elan and Acorda acknowledge and agree that (i) under the SCI Agreement and the MS Agreement, Elan had the responsibility for generating such data, (ii) pursuant to the Cardinal Agreement, Cardinal is currently performing such stability testing, (iii) the Technology Transfer Responsibilities shall govern the related responsibilities of the Parties, provided that the data resulting from such stability testing shall be provided to both Acorda and Elan, and Elan shall have the right to and responsibility for providing necessary and appropriate technical assistance and oversight of such stability testing (including having the right at its own expense to arrange for its employees involved in the Project to discuss the stability testing and its results with the technical personnel of Acorda and Cardinal upon reasonable notice and at reasonable times); and (iv) Elan shall incorporate such stability data into the CMC module that it will prepare for delivery to Acorda for inclusion in the NDA or any NDA Equivalent, pursuant to Article 3.8.
- 3.7. For the avoidance of doubt, the Parties hereby confirm that a primary objective of the Project is to generate the NDA and secure NDA Approval for the oral Product. As of the date of the SCI Agreement, the MS Agreement and the Amendment Date, it is the Parties' expectation that the body of data so generated in the Project will also support such applications for Regulatory Approval that Acorda shall make in the other countries of the Territory. In the event however that such expectation proves unfounded or incorrect and further data is required to obtain such other approvals as are pursued by Acorda in the other countries of the Territory, Acorda shall determine the viability of proceeding further with the regulatory application and generation of the further data requirements. In the event that Acorda elects to continue, the Parties shall update the Development Plan to reflect the allocation between the Parties of conducting such additional activities. In such event, subject to and in accordance with the provisions of this Article 3, Elan shall be responsible for conducting such further activities and generating such further data as set forth in the Development Plan to allow Acorda to seek such further Regulatory Approvals in the Territory. Notwithstanding the foregoing, it is intended by the Parties that except as otherwise specifically set forth in a Development Plan agreed to by the Parties and subject to compliance with regulatory requirements, Acorda shall have primary responsibility and decision making authority with respect to development and marketing of Product.

3.8. Elan shall be responsible for the preparation and delivery to Acorda of the CMC Section in electronic and hard copy form and the latter in format suitable for inclusion in the NDA and any NDA Equivalent in accordance with applicable law and regulatory standards and as the Parties may mutually agree. Acorda shall provide Elan as soon as practicable with a copy of any comments received by Acorda from the FDA or any other regulatory authority relating to the CMC Section and Elan shall provide or, at Acorda's request, cooperate with Acorda to provide, a response to such comments as soon as practicable. In the event that there is a deficiency in the CMC Section attributable to negligence by Elan in the activities conducted by Elan, then Elan shall be responsible for correcting such deficiency, at Elan's expense, and shall use reasonable efforts to do so as soon as practicable. In the event Elan breaches the foregoing obligation, in addition to any other remedies available to Acorda, Acorda shall have the right to correct such deficiency or arrange to have a Third Party conduct any required activities necessary to correct such deficiency, at Elan's expense, the cost of which may be offset against any amounts otherwise due Elan under this Agreement. Acorda shall be responsible for the maintenance of the CMC Section in accordance with applicable law and regulatory standards, at Acorda's expense, provided that (i) Elan shall cooperate with and provide reasonable assistance to Acorda in connection with such maintenance; and (ii) any revisions, amendments or supplements to the CMC Section required by or resulting from the negligence of Elan in performing its obligations hereunder or under the Supply Agreement, or from any action taken by Elan on its own initiative, or taken by Acorda or any Acorda Designee on behalf of or at the request of Elan, including any changes made by Elan on its own initiative to its manufacturing processes or facilities, shall be at Elan's expense; and (iii) Elan shall not make any changes to its manufacturing processes or facilities that would require an amendment or supplement to the CMC Section without first notifying Acorda of such changes and preparing and delivering to Acorda any required amendments or supplements to the CMC Section before the implementation of such changes.

If Elan is required in any regulatory jurisdiction to file with any regulatory authority a DMF relating to Compound or Product, Elan shall at Acorda's cost prepare and file in accordance with applicable regulatory requirements such DMF and Acorda shall have a right of reference thereto to the extent required by the NDA or any NDA Equivalent or in order to exercise its license rights under this Agreement.

Similarly, if Elan is entitled to market, distribute and sell the Product in a particular country, and Acorda is required in any regulatory jurisdiction to file with any regulatory authority a DMF relating to Compound or Product, Acorda shall at Elan's cost prepare and file in accordance with applicable regulatory requirements such DMF and Elan shall have a right of reference thereto to the extent required by the NDA or any NDA Equivalent or in order to exercise its rights under this Agreement.

#### **ARTICLE 4 [NOT USED]**

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

## **ARTICLE 5 FINANCIAL PROVISIONS**

### **5.1. Research and Development Activities :**

- 5.1.1 In consideration for the research and development of the Product by Elan under this Agreement, Acorda shall pay to Elan the amounts set out in Article 5.1.2.
- 5.1.2 Research and Development Cost incurred by Elan after the Amendment Date and before commercial launch of the Product shall be invoiced and payable monthly, at a rate of FTE plus [\*\*\*].
- 5.1.3 Elan will keep accurate records consistent with its normal business practices, of the efforts expended by it under the Project for which it is charging Acorda, which will include the time spent by each person working on the Project. Each quarter Elan will send reports to Acorda in order to enable Acorda to monitor Elan's level of effort to assure Acorda that the committed level of effort is being applied.
- 5.1.4 If Elan's development efforts require the use of a Third Party, Elan will, prior to appointing such Third Party, discuss with Acorda the activities to be undertaken by such Third Party and the terms and conditions thereof. Elan will not proceed with such Third Party without the prior written approval of Acorda, which approval shall not be unreasonably withheld. Elan shall charge Acorda for the time spent by its employees in administering the work conducted by such Third Parties on the basis set out in Article 5.1.2. Elan shall have the right to charge Acorda for all reasonable out of pocket expenses incurred in the provision of its obligations thereunder.

### **5.2. License Royalties :**

- 5.2.1 In consideration of the rights and licence granted to Acorda to the Elan Patent Rights by virtue of the SCI Agreement, Acorda has paid to Elan \$5,000,000 (five million United States Dollars); and
- 5.2.2 In consideration of the rights and licence granted to MS R & D to the Elan Patent Rights by virtue of the MS Agreement, MS R & D has paid to Elan \$15,000,000 (fifteen million United States Dollars) –

receipt of each of which is hereby acknowledged by Elan.

### **5.3. Milestone Payments :**

- 5.3.1 In further consideration of the rights and license granted to Acorda to the Elan Patent Rights hereunder, Acorda shall pay to Elan the following non-refundable amounts contingent upon occurrence of the specified event, with each milestone payment to be made no more than once with respect to the achievement of such event (but payable the first time such milestone is achieved) for Product:

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

- 5.3.1.1 [\*\*\*\*] 90 (ninety) days after written receipt of NDA Approval of the Product for the first Indication;
- 5.3.1.2 [\*\*\*] on the earlier of (a) 90 (ninety) days after written receipt of NDA Approval of the Product for a second Indication or (b) the 2<sup>nd</sup> (second) anniversary of NDA Approval of the Product for the first Indication;
- 5.3.1.3 [\*\*\*] upon the commencement of a Phase III Clinical Study of the Product for a third Indication;
- 5.3.1.4 [\*\*\*] upon acceptance by the FDA for filing of the NDA for a third Indication;
- 5.3.1.5 [\*\*\*] upon written receipt of NDA Approval of the Product for a third Indication;
- 5.3.1.6 [\*\*\*] upon First Commercial Sale of the Product for a third Indication;
- 5.3.1.7 [\*\*\*] upon the commencement of a Phase III Clinical Study of the Product for a fourth Indication;
- 5.3.1.8 [\*\*\*] upon acceptance by the FDA for filing of the NDA for a fourth Indication;
- 5.3.1.9 [\*\*\*] upon written receipt of NDA Approval of the Product for a fourth Indication; and
- 5.3.1.10 [\*\*\*] upon First Commercial Sale of the Product for a fourth Indication –

the payments described in Articles 5.3.1.1 to 5.3.1.10 being “**Milestone Payments**”.

5.3.2 The Milestone Payments referred to in Articles 5.3.1.3 through 5.3.1.10 shall be payable within forty five (45) days after achievement of the applicable milestone event.

5.3.3 For the avoidance of doubt, references in this Article 5.3 to an Indication by number are to the number of Indications for which a particular milestone has been achieved.

By way of example, the Milestone Payment in Article 5.3.1.9 shall become payable upon NDA Approval for a Indication “E”, where Indications “A”, “B”

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

and “C” have already received NDA Approval, notwithstanding that commencement of a Phase III Clinical Study of the Product and/or NDA filing for Indication “D” may have occurred before commencement of such studies for Indication “E”.

- 5.3.4 In respect of each of the third and fourth indication of the Product, in the event that Acorda spends in excess of [\*\*\*] on Phase III Clinical Studies for such indication, Acorda shall be entitled to credit one half of the excess spend in respect of that indication, over and above [\*\*\*] per indication, against the respective Milestone Payments for that indication, viz. the Milestone Payments referred to in Articles 5.3.1.4 and 5.3.1.5 for the third indication and the Milestone Payments referred to in Articles 5.3.1.8 and 5.3.1.9 for the fourth indication, up to a maximum of [\*\*\*\*] for each indication.
- 5.3.5 The Milestone Payments shall not be subject to future performance obligations of Elan to Acorda and shall not be applicable against future services provided by Elan to Acorda.

5.4. Certain Payments relating to Rush/Acorda License :

Elan shall reimburse Acorda in respect of the milestone payments payable from Acorda to Rush pursuant to Section 5.2 of the Rush/Acorda License and Acorda shall pay Elan an additional royalty, each in accordance with and subject to the terms and conditions of the Rush Payments Agreement.

5.5. License Revenues :

In further consideration of the rights and licence granted to Acorda to the Elan Patent Rights by virtue of this Agreement, Acorda shall pay to Elan [\*\*\*] of all and any License Revenues.

5.6. Royalty on Sales :

- 5.6.1 Subject to Article 5.6.2 and in further consideration of the rights and license granted to Acorda to the Elan Patent Rights while there is a Valid Claim thereunder, and in consideration of the rights and license granted to Acorda of the Elan Know-How thereafter, Acorda shall additionally pay to Elan a royalty of [\*\*\*] of the NSP of the Product (the “**Elan Royalty**”). The Elan Royalty shall be payable as follows:

- 5.6.1.1 In respect of the Elan Royalty, where Elan manufactures and supplies the Product, Elan shall render an invoice in respect of the quantities of Product delivered to Acorda for a sum calculated by reference to [\*\*\*] of the Notional NSP and the quantity of Product supplied. For the avoidance of doubt the Parties agree that if for whatever reason the Product supplied by Elan to Acorda which meets the Specifications and the applicable law and regulatory

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

requirements is not sold by Acorda, payment to Elan for such Product shall nonetheless be effected and the price of the Product shall be determined by reference to the NSP calculated pursuant to the provisions of Article 5.6.1.2.

- 5.6.1.2 Within forty five (45) days of the end of each calendar quarter, Acorda shall notify Elan of the prevailing NSP for Product sold in the previous quarter. Acorda shall calculate the total Elan Royalty payable to Elan for the Product supplied by Elan during the previous quarter by reference to [\*\*\*] of the NSP. The Parties shall adjust their account by Acorda promptly paying to Elan, or by Elan crediting Acorda against the price of Product to be supplied (as the case may be), the difference between the sum paid pursuant to Article 5.6.1.1 and the sum calculated pursuant to this Article 5.6.1.2.
  - 5.6.1.3 In respect of the Elan Royalty, where Elan does not manufacture and supply the Product, within forty five (45) days of the end of each calendar quarter (for the first two years following first commercial sale of the Product in any country of the Territory, within sixty (60) days of the end of each quarter), Acorda shall notify Elan of the prevailing NSP of Product sold in that preceding quarter and of the quantity of Product sourced from third parties. The Elan Royalty in respect of such Product shall each be payable on the date on the date such report is due.
- 5.6.2 In countries where there are no Valid Claims covering the Product and if there is no Competition, Acorda shall pay to Elan the applicable Elan Royalty set forth in Article 5.6.1 for sales in such countries; provided, if, and only if, (a) Elan is not manufacturing the Product, (b) there are no Valid Claims covering the Product and (c) there is Competition in any such country, the Elan Royalty due under Article 5.6.1 on Product sales in such country shall be reduced to [\*\*\*] of NSP provided, however, that in the event there is Competition in any country, the Parties agree to discuss, considering market conditions, further reducing the Elan Royalty.
  - 5.6.3 In the event that Elan or its subcontractor does not manufacture and supply the Product and in the event that Acorda enters into a licence agreement with any Third Party with respect to a Dominating Patent, or to avoid or settle a claim by a Third Party for infringement or misappropriation by any Elan Intellectual Property right relating to the manufacture, use or sale of the Product, Acorda may offset any payments made in accordance with such licence agreements against any royalty amounts (and not amounts in respect of manufacturing) owed by Acorda to Elan, up to a maximum of [\*\*\*] of the royalty amounts due. For the purpose of this Article 5.6.3 the Parties hereby confirm that the minimum Elan Royalty payable by Acorda to Elan shall be [\*\*\*] of the NSP. Any dispute under this Article 5.6.3 (including one as to

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

whether Acorda should have entered into such agreement) shall be resolved by referring such matter to an independent patent attorney for arbitration, and in the event of such a dispute the offset above shall only take effect prospectively upon an arbitrator's decision in favour of Acorda. In such event the procedure set forth in Article 12.14 shall to the extent practicable apply to the conduct of such arbitration.

- 5.6.4 No more than one royalty payment shall be due with respect to a sale of a particular Product (except any royalty payable under the Rush Payments Agreement). No multiple payments shall be payable because any Product or its manufacture, sale or use is covered by more than one Valid Claim covering the Product. No royalty payments shall be payable with respect to Products distributed for use in research and/or development, in clinical trials or as promotional samples.
- 5.6.5 All payments due hereunder shall be made in United States Dollars in accordance with Article 5.9.
- 5.6.6 For the avoidance of doubt, the Elan Royalty and any royalty payable under the Rush Payments Agreement shall be payable whether or not Elan is manufacturing and supplying the Product.

5.7. Additional Expenses :

Acorda shall pay Elan within thirty (30) days of the date of invoicing for any technical assistance requested by Acorda, including travel and subsistence, provided that Elan is not otherwise obliged to provide such assistance pursuant to the terms of the Agreement. Elan's charges for such work shall be Research and Development Cost plus [\*\*\*], as well as reimbursement for out-of pocket expenses incurred by Elan to Third Parties in performing activities under the Development Plan that are not already included in Research and Development Cost.

5.8. Non-Refundable Payments :

All payments received by Elan from Acorda under Article 5 shall be non-refundable, subject to the provisions of Article 5.9.5.

5.9. Payments, Reports and Records :

- 5.9.1 Acorda shall keep and shall cause its Affiliates and Designees to keep true and accurate records of gross sales of the Product, the items deducted from the gross amount in calculating the NSP, the NSP and the royalties payable to Elan under Article 5 hereof. Acorda shall deliver to Elan a written statement thereof within forty five (45) days following the end of each calendar quarter (or any part thereof in the first or last calendar quarter of this Agreement) for such calendar quarter. The said written statements shall set forth on a country-by-country basis, the calculation of the NSP from gross revenues during that calendar quarter, the applicable percentage rate, and a computation of the sums due to Elan (the "**Statement**"). The Parties' financial officers shall agree upon the

precise format of the Statement. Acorda shall also provide Elan with preliminary monthly sales reports in a format to be determined by the Committee.

- 5.9.2 Payments due on NSP of the Product based on sales amounts in a currency other than United States Dollars shall first be calculated in the foreign currency and then converted to United States Dollars on the basis of the exchange rate in effect for the purchase of United States Dollars with such foreign currency quoted in the Wall Street Journal (or comparable publication if not quoted in the Wall Street Journal) with respect to the sale of currency of the country of origin of such payment for the day prior to the date on which the payment by Acorda is being made. In order to facilitate the payments, the Parties may agree that with respect to a certain country or countries the payments due with regard to Product sales in such country or countries will be paid directly by the Acorda Designee(s) responsible for the marketing of the Product in such country or countries to Elan. In remitting such royalty payments such Designees(s) will abide by the terms of this Article 5.9. No such direct payments will be made by any Acorda Designee unless Acorda and Elan have beforehand agreed that such direct royalty payment and such direct payments shall not adversely affect the withholding liability of Elan compared to the payments made by Acorda to Elan.
- 5.9.3 If laws, rules or regulations require withholding of income taxes or other taxes imposed upon payments set forth in this Article 5, Elan shall provide Acorda, prior to any such payment, once each calendar year or more frequently if required, with all forms or documentation required by any applicable taxation laws, treaties or agreements to such withholding or as necessary to claim a benefit thereunder (including, but not limited to Form W-8BEN or any successor forms). Any such income or other taxes which Acorda is required by law to pay or withhold on behalf of Elan with respect to royalties and any other monies payable to Elan under this Agreement shall be deducted from the amount of such NSP payments, royalties and other monies due. Acorda shall furnish Elan with proof of such payments. Any such tax required to be paid or withheld shall be an expense of and borne solely by Elan. Acorda shall promptly provide Elan with a certificate or other documentary evidence to enable Elan to support a claim for a refund or a foreign tax credit with respect to any such tax so withheld or deducted by Acorda. Both Parties will reasonably cooperate in completing and filing documents required under the provisions of any applicable tax treaty or under any other applicable law, in order to enable Acorda to make such payments to Elan without any deduction or withholding.
- 5.9.4 All payments due hereunder shall be made to the designated bank account of Elan in accordance with such timely written instructions as Elan shall from time to time provide.
- 5.9.5 For the twenty four (24) month period following the close of each calendar year during the term of the Agreement, Elan and Acorda will provide each other's independent certified accountants (reasonably acceptable to the other Party) with access, during regular business hours and upon reasonable prior request and

subject to the confidentiality provisions as contained in this Agreement, to such Party's books and records relating to the Product, solely for the purpose of verifying the accuracy and reasonable composition of the calculations hereunder for the calendar year then ended, including in the case of Elan the sums payable by Acorda to Elan pursuant to Article 5. If such accounting firm concludes that additional royalties were owed during such period then Acorda shall pay the additional royalties within sixty (60) days after the date of delivery of such accounting firm's written report so concluding. In the event such accounting firm concludes that amounts were overpaid by Acorda during such period, Elan shall repay Acorda the amount of such overpayment within sixty (60) days after the date of delivery of such accounting firm's written report so concluding.

5.9.6     In addition, for the twenty four (24) month period following the close of each calendar year, Elan will provide Acorda's independent certified accountants (reasonably acceptable to Elan) with access, during regular business hours and upon reasonable prior request and subject to the confidentiality provisions as contained in this Agreement, to Elan's books and records relating to (i) the Manufacturing Cost of the Product; (ii) any activities undertaken by Elan on behalf of Acorda pursuant to Article 3; and (iii) any activities undertaken by Elan on behalf of Acorda pursuant to Article 6, in each case, for the purpose of verifying the reasonable basis of the payments made by Acorda hereunder with respect thereto.

5.9.7     Notwithstanding any other provision of this Agreement, if at any time legal restrictions prevent the prompt remittance of part or all of the payments due to Elan in any country, payment shall be made through such lawful means or methods as Acorda may determine after consultation with Elan. When in any country the law or regulations prohibit both the transmittal and deposit of royalties on sales in such a country, payments shall be suspended for as long as such prohibition is in effect and promptly after such prohibition ceases to be in effect, all royalties or other payments that Acorda or its Affiliates would have been obligated to transmit or deposit, but for the prohibition, shall be deposited or transmitted, as the case may be, to the extent allowable, less any transactional costs. If the royalty rate specified in this Agreement should exceed the permissible rate established in any country, the royalty rate for sales in such country shall be adjusted to the highest legally permissible or government-approved rate.

## **ARTICLE 6 REGISTRATION OF THE PRODUCT**

6.1.     As is stated at Article 3.7, a primary objective of the Project is to generate the NDA and to secure NDA Approval. As of the date of this Agreement, it is the Parties' expectation that the body of data so generated during the Project will support such applications for Regulatory Approval that Acorda shall make in the other countries of the Territory.

- 6.2. Subject to the review by the Committee pursuant to Article 10 and to Elan's preparation and delivery to Acorda of the CMC Section in form and substance acceptable for inclusion in the NDA (as well as any revisions thereto as may be mandated or requested by the FDA), and to the other provisions of this Article 6, Acorda shall have the right and responsibility for filing, shall use its reasonable efforts to prosecute to approval, and shall own the NDA. It is acknowledged that Elan has assigned the IND to Acorda. Within ninety (90) days following the completion of the Project as determined by the Committee, Acorda shall submit the NDA for filing with the FDA.
- 6.3. Acorda shall not alter the Specifications or any part of the CMC Section unless (a) by agreement with Elan, or (b) mandated by the FDA or other regulatory authority. In either case, Acorda shall promptly notify Elan and for changes made after NDA Approval, shall be responsible for Elan's reasonable expenses associated with required changes to its manufacturing license(s ).
- 6.4. Subject to Elan preparing and delivering to Acorda the CMC Section as set forth in this Agreement, Acorda shall be responsible for obtaining all Regulatory Approvals necessary for Elan to package the Product into final market packaging. Acorda shall be responsible for obtaining all applicable FDA and other state and local regulatory approvals for the distribution of the Product in the United States of America and elsewhere. Elan shall co-operate with Acorda in obtaining such approvals.
- 6.5. Acorda shall maintain at its own cost the NDA (and shall bear the cost of any amendments or supplements to the CMC Section, other than those requested by Elan, which costs shall be borne by Elan) with the FDA during the period that Acorda and/or its Designees are marketing the Product. Acorda shall continue to maintain the NDA with the FDA, at Elan's request and expense, if Elan acquires the right to a licence in the United States or any other country in which the NDA is relied upon as the primary application for Regulatory Approval pursuant to Article 2.11.3 for such term thereafter during which Elan and/or its designees (for which purpose the definition of Designee as set out in Article 1 shall apply mutatis mutandis) is marketing the Product. Acorda hereby agrees to provide to Elan a copy of the NDA within thirty (30) days of the submission thereof to the FDA. Acorda shall also furnish a copy to Elan of all other regulatory filings and other material correspondence with the FDA and other regulatory authorities within thirty (30) days of submission. The NDA and any NDA Equivalent or application for Regulatory Approval filed in Territory for the Product shall remain the property of Acorda, provided that Acorda shall allow Elan access thereto to enable Elan to fulfil its obligations and exercise its rights hereunder.
- 6.6. During the NDA registration procedure, Acorda shall keep Elan promptly and fully advised of Acorda's registration activities, progress and procedures during Committee meetings. Elan and Acorda shall each before proceeding with any FDA filings, meetings or telephone conferences, inform and discuss the participation of the other with respect to any such proposed dealings with the FDA relating to the Product and shall promptly provide to that other copies of all correspondence with, and all documents and applications filed with, or submitted by it to, any regulatory authority with respect to Product; provided, however, that that the Parties acknowledge and agree that Acorda

shall be the primary contact with the FDA and any other regulatory authority in the Territory with respect to Product.

- 6.7. It is hereby acknowledged that there are inherent uncertainties involved in the development and registration of pharmaceutical products with the FDA or any other regulatory body in the United States of America insofar as obtaining approval is concerned and that such uncertainties form part of the business risk involved in undertaking the form of commercial collaboration as set forth in this Agreement. Therefore, save for using its reasonable efforts, neither Party shall have any liability to the other solely as a result of any failure of the Product to achieve the approval of the FDA, or any other regulatory body in the United States of America.
- 6.8. Acorda shall also be responsible for the filing and prosecution at its own cost of the regulatory applications with the regulatory authorities in Japan, the Major European Markets and in such other countries of the Territory as it elects and Elan shall cooperate fully with Acorda in connection with such activities. The provisions of Articles 6.1 to 6.7 inclusive shall apply, mutatis mutandis, to Acorda's and Elan's obligations vis a vis Japan, the Major European Markets and such other countries of the Territory.

#### **ARTICLE 7 [NOT USED]**

#### **ARTICLE 8 WARRANTY AND INDEMNITY**

- 8.1. Elan represents and warrants that Elan is the sole and exclusive owner or licensee of, or controls all right, title and interest in the Elan Intellectual Property; Elan has the right to grant the rights and licences granted herein, and the Elan Intellectual Property as it pertains to the Product and the Product is free and clear of any lien, encumbrances, security interest) or restriction on license; Elan will not grant during the term of this Agreement, any right, licence or interest in and to the Elan Intellectual Property or the Product, or any portion thereof, inconsistent with the licence granted to Acorda herein; and there are no pending or, to the knowledge of Elan, threatened, actions, suits, investigations, claims or proceedings in any way related to the Elan Intellectual Property or the Product. Insofar as such patent rights and know-how constitute Elan Patent Rights or Elan Know-How for the purposes of this Agreement, Elan represents and warrants that it is entitled to grant a licence to such patent rights and know-how as are developed by or on behalf of Elan pursuant to the Axogen Agreement, including any patent rights and non-patented know-how or other information which may be conceived, reduced to practice or otherwise developed by or on behalf of Elan pursuant to the Axogen Agreement. Elan agrees to hold Acorda harmless from any and all costs, expenses and damages (including reasonable attorneys' fees) incurred or sustained by Acorda as the result of any Third Party's challenges to Elan's right to enter into this Agreement and to grant the rights and licences herein granted to Acorda and the Elan Intellectual Property.
- 8.2. Elan represents and warrants that the execution of this Agreement and the full performance and enjoyment of the rights of Acorda under this Agreement will not breach or in any way

be inconsistent with the terms and conditions of any licence, contract, understanding or agreement, whether express, implied, written or oral between Elan and any Third Party.

- 8.3. Acorda represents and warrants that it has not granted any option, licence, right or interest in or to the Compound or to the Acorda Patent Rights to any Third Party which would conflict with the terms of this Agreement. Acorda agrees to hold Elan harmless from any and all costs, expenses and damages (including reasonable attorneys' fees) incurred or sustained by Elan as the result of any Third Party's challenges to Acorda's right to enter into this Agreement.
- 8.4. Acorda represents and warrants that the execution of this Agreement will not breach or in any way be inconsistent with the terms and conditions of any licence, contract, understanding or agreement, whether express, implied, written or oral between Acorda and any Third Party.
- 8.5. Each Party represents and warrants that with respect to all data and information generated by it to support regulatory filings seeking to obtain approval of the regulatory authorities shall, to the best of that party's knowledge, be free from fraud or material falsity and shall be accurate and reliable for purposes of supporting approval of the submissions. Each Party warrants that all regulatory applications made by that Party have not been and will not be obtained either through bribery or the payment of illegal gratuities, and that no Regulatory Approval shall be obtained with illegal or unethical behaviour of any kind.
- 8.6. Elan represents and warrants that the Product supplied to Acorda by Elan under this Agreement has been and shall be free of any lien, security, interest or other encumbrance on title, conform to the Specifications and in accordance with all regulations and requirements of the FDA and foreign regulatory authorities including, without limitation, the cGMP regulations which apply to the manufacture, storage, packaging and supply of the Product. Elan represents and warrants that the Product supplied to Acorda under this Agreement has been and shall be free of defects in material and workmanship, shall not be adulterated or mis-branded as defined by the Act (or applicable foreign law) and shall not be a product which would violate any section of such Act if introduced in interstate commerce and shall be fit for use as a pharmaceutical product. Acorda agrees not to assert its right to rescind this Agreement (if any) in the event of a breach of the representations of Elan contained in this Article 8.6.

It is hereby acknowledged for the avoidance of doubt that for the purposes of this Article 8, commercial supplies of Product under the Supply Agreement are not regarded as supplied "under this Agreement".

- 8.7. Elan and Acorda is each fully cognisant of all applicable statutes, ordinances and regulations of the United States of America with respect to the manufacture of the Product including, but not limited to, the Act and regulations thereunder, cGLP, cGCP and cGMP. Elan shall manufacture or procure the manufacture the Product under this Agreement in conformity with the Specifications, the relevant portions of the CMC Section and, if applicable, the DMF and in a manner which fully complies with all United States of America and foreign statutes, ordinances, regulations and practices.

- 8.8. Acorda shall indemnify and hold harmless Elan, its agents and employees from and against all claims, damages, losses, liabilities and expenses to which Elan, its agents, and employees may become subject related to or arising out of Acorda's bad faith, gross negligence or intentional misconduct in connection with the filing or maintenance of the NDA. Elan shall indemnify and hold harmless Acorda, its agents and employees from and against all claims, damages, losses, liabilities and expenses to which Acorda, its agents, and employees may become subject related to or arising out of Elan's bad faith, gross negligence or intentional misconduct in connection with the preparation of the CMC Section.
- 8.9. Elan shall indemnify, defend and hold harmless Acorda and its officers, directors, employees and agents from all actions, losses, claims, demands, damages, costs and liabilities (including reasonable attorneys' fees) due to Third Party claims to which Acorda is or may become subject insofar as they arise out of or are alleged or claimed to arise out of (i) any breach by Elan of any of its obligations under this Agreement, (ii) any breach of a representation or warranty of Elan made in this Agreement, (iii) any activities conducted by Elan in connection with the Project, (iv) any failure of the Product provided under this Agreement to meet the Specifications, or (v) the manufacture or shipment of the Product provided under this Agreement by Elan, except in each case to the extent due to the negligence or wilful misconduct of Acorda.
- 8.10. Acorda shall indemnify, defend and hold harmless Elan and its officers, directors, employees and agents from all actions, losses, claims, demands, damages, costs and liabilities (including reasonable attorneys' fees) due to Third Party claims to which Elan is or may become subject insofar as they arise out of or are alleged or claimed to arise out of (i) any breach by Acorda of any of its obligations under the Agreement, (ii) any breach of any representation or warranty of Acorda made in this Agreement, and (iii) any activities conducted by Acorda in connection with the Project, except to the extent due to the negligence or wilful misconduct of Elan.
- 8.11. Acorda shall indemnify, defend and hold harmless Elan and its officers, directors, employees and agents from all actions, losses, claims, demands, damages, costs and liabilities (including reasonable attorneys' fees) due to Third Party claims to which Elan is or may become subject insofar as they arise out of or are alleged or claimed to arise out of activities conducted by Acorda or its Designee in the manufacture, transport, packaging, storage, handling, distribution, promotion, marketing or sale of the Product, that was caused by the negligence or wrongful acts or omissions on the part of Acorda or its Designees, except in each case, to the extent covered by Article 8.10 or due to the negligence or wilful misconduct of Elan.
- 8.12. Elan represents and warrants that, the manufacture, sale, distribution or use of the Product in the Territory solely because of the use of the Elan Intellectual Property does not, to Elan's actual knowledge, infringe any patent owned by a Third Party, provided, that Elan represents and warrants that it is not aware of any pending or threatened proceeding or claim of any person or entity pertaining to the Product, that asserts the infringement of any patent owned by a Third Party. In the event that (I) a claim or proceedings are brought against Acorda and/or Elan by a Third Party alleging that the

manufacture, sale, distribution or use of the Product in the Territory infringes the patent rights of such Third Party, and such alleged infringement results from the use of the Elan Intellectual Property, and (II) Elan was in breach of the foregoing representation and warranty with respect to such Third Party patent rights, Elan's liability to Acorda with respect to such infringement pursuant to this Article 8.12 (including without limitation, reasonable attorney's fees and other out of pocket expenses of the litigation, including the fees and expenses incurred by Elan and Acorda) shall be limited to and shall be borne by the Parties in the manner set forth in Article 11.3.1.

For purposes of this Article 8, "Elan's actual knowledge" shall mean the knowledge of representatives of Elan that have been engaged in the Project in a key operational role.

- 8.13. Elan has no actual knowledge that (a) the issued and unexpired patents included in the Elan Patent Rights are invalid or unenforceable over any references or prior art known to Elan or its agents, taken alone or in combination, nor (b) that the pending patent applications included in the Elan Patent Rights fail to include patentable subject matter, nor (c) that Elan and its agents have failed to comply with any duty of candor imposed on an applicant for patent before a particular national or regional patent office with respect to the patents, applications and patent offices listed in Schedule 3.
- 8.14. Acorda represents and warrants that as of the date of this Agreement to Acorda's actual knowledge, the development and manufacture of the Product by Elan or Acorda, or the manufacture, sale, distribution or use of the Product in the Territory, solely because of the use of the Acorda Patent Rights or Acorda Know-How will not to the best of Acorda's belief infringe any patent owned by a Third Party.

For purposes of this Article 8, "Acorda's actual knowledge" shall mean the knowledge of representatives of Acorda that have been engaged in the Project in a key operational role.

- 8.15. As a condition of obtaining an indemnity in the circumstances set out above, the Party seeking an indemnity shall:
- 8.15.1 fully and promptly notify the other Party of any claim or proceeding, or threatened claim or proceeding;
  - 8.15.2 permit the indemnifying Party to take full care and control of such claim or proceeding;
  - 8.15.3 assist in the investigation and defence of such claim or proceeding;
  - 8.15.4 not compromise or otherwise settle any such claim or proceeding without the prior written consent of the other Party, which consent shall not be unreasonably withheld; and
  - 8.15.5 take all reasonable steps to mitigate any loss or liability in respect of any such claim or proceeding.

- 8.16. TO THE FULLEST EXTENT PERMITTED BY LAW, APART FROM THE FOREGOING REPRESENTATIONS, WARRANTIES AND INDEMNITY, ELAN MAKES NO ADDITIONAL REPRESENTATIONS OR WARRANTIES AND HEREBY DISCLAIMS ALL WARRANTIES, REPRESENTATIONS, AND LIABILITIES, WHETHER EXPRESS OR IMPLIED, ARISING FROM CONTRACT OR TORT (EXCEPT FRAUD), IMPOSED BY STATUTE OR OTHERWISE, RELATING TO THE PRODUCT AND/OR ANY PATENTS OR TECHNOLOGY USED OR INCLUDED IN THE PRODUCT, INCLUDING ANY WARRANTIES AS TO MERCHANTABILITY, FITNESS FOR PURPOSE, CORRESPONDENCE WITH DESCRIPTION, OR NON-INFRINGEMENT.
- 8.17. EXCEPT IN RESPECT OF EACH PARTY'S LIABILITY TO INDEMNIFY THE OTHER AGAINST CLAIMS MADE BY A THIRD PARTY, NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, ELAN AND ACORDA SHALL NOT BE LIABLE TO THE OTHER BY REASON OF ANY REPRESENTATION OR WARRANTY, CONDITION OR OTHER TERM OR ANY DUTY OF COMMON LAW, OR UNDER THE EXPRESS TERMS OF THIS AGREEMENT, FOR ANY CONSEQUENTIAL, SPECIAL OR INCIDENTAL OR PUNITIVE LOSS OR DAMAGE (WHETHER FOR LOSS OF CURRENT OR FUTURE PROFITS, LOSS OF ENTERPRISE VALUE OR OTHERWISE) AND WHETHER OCCASIONED BY THE NEGLIGENCE OF THE RESPECTIVE PARTIES, THEIR EMPLOYEES OR AGENTS OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, EXCEPT THAT THIS LIMITATION SHALL NOT APPLY TO DAMAGES DIRECTLY OR INDIRECTLY ARISING FROM PERSONAL INJURY OR DEATH CAUSED BY THE DEFECTIVE DESIGN AND/OR MANUFACTURE OF THE PRODUCT.
- 8.18. Elan represents and warrants that Elan Corporation plc will provide Elan Pharma Limited or any other subsidiaries with a licence and the rights to manufacture the Product in accordance with the terms of this Agreement and the Supply Agreement.

#### **ARTICLE 9 [NOT USED]**

#### **ARTICLE 10 COMMITTEE**

- 10.1. Acorda and Elan shall establish the Committee to provide oversight, review and coordination relating to the development, manufacturing and supply, Regulatory Approval and commercialisation of the Product, and for resolution of disputed issues that may arise between the Parties under this Agreement or the Supply Agreement. Unless otherwise agreed, the Committee shall be comprised of six members, with three members appointed by each of Elan and Acorda. The operation of the Committee shall be as set forth at Article 10.2 to Article 10.5. Acorda and Elan each shall appoint a person (a “**Primary Contact**”) to be the primary contact between the Parties with respect to the Project and to coordinate correspondence and communications between the Parties. Each Party shall notify the other in writing within thirty (30) days after the

Amendment Date of its representatives on the Committee and of the appointment of its Primary Contact and shall notify the other Party as soon as practicable upon changing its Committee representatives or the Primary Contact appointment in accordance with Article 12.12. The Primary Contact of each Party will be one of its three representatives in the Committee.

10.2. Except as specifically set forth in this Agreement, the Committee shall be responsible for overseeing the Project, including the following:

- 10.2.1 reviewing and, if deemed necessary or desirable, updating the Development Plan, the Technology Transfer Responsibilities and the Project budget; and accordingly Elan shall advise the Committee if it believes that the budget for items of the Project has been or is likely to be significantly exceeded;
- 10.2.2 facilitating the transfer of know-how, regulatory correspondence and communications and other data as contemplated by this Agreement and the Supply Agreement;
- 10.2.3 reviewing and assessing the progress of development of Product and, to the extent contemplated by this Agreement, evaluating and, if determined by the Committee, approving Technology Transfer Responsibilities and authorizing Elan to perform tasks required in connection with development of and regulatory submissions relating to Product;
- 10.2.4 discussing objectives for and performance of the Product in the Territory, and the promotional activities and materials associated therewith;
- 10.2.5 resolving any disputes between the Parties relating to the Project, provided, however, that Acorda shall have the final decision as to all clinical trial protocols and the conduct of all clinical trials and marketing and promotional activities by Acorda or its Designee; and
- 10.2.6 such other activities as are delegated to the Committee under this Agreement.

10.3. The Committee shall use its best efforts to resolve any disputed issues, conflicts or differences of opinion between the Parties under this Agreement. If the Committee is unable to reach a consensus on any issue within thirty (30) days after such issue being presented to the Committee by a Party, notwithstanding the exercise of its best efforts as provided in Article 10, then such issue shall be referred to the chief executive officers of Acorda and Elan. Any final decision of the CEOs shall be conclusive and binding on the Parties hereto, and must be reached, if practicable under the circumstances, within thirty (30) days after being referred to the CEO, provided, however, that issues referred to in Article 10.2.5 as being subject to Acorda's final decision shall be determined finally and conclusively by Acorda in the event that the Committee and/or the CEOs are unable to reach a consensus; provided further, that any such decision shall comply with applicable governmental regulatory requirements. Any matter as to which the CEOs are unable to reach agreement may be submitted by either Party to binding arbitration for final

resolution pursuant to Article 12.14, or as otherwise agreed, except with respect to matters for which Acorda has authority to make final decisions.

- 10.4. The Committee shall consist of the Primary Contact from each Party together with such additional business and development personnel from each Party who are deemed necessary to accomplish the work of the Committee. Unless otherwise agreed, the Committee shall meet at least once each calendar quarter, in person, or by video or telephone conference. In such instance, the next quarterly meeting will be scheduled. Meetings shall be chaired by the chief representative of Acorda and such representative shall be responsible for preparing minutes of such meetings.
- 10.5. At each meeting, Acorda shall summarize the status of Acorda's clinical development, regulatory and, if applicable, marketing and promotional activities with respect to Product. Any disclosures of such progress, results, data or know-how in any meeting shall be deemed Confidential Information of Acorda. At and between meetings of the Committee, each Party shall keep the other fully and regularly informed as to its progress with its respective obligations.
- 10.6. The Committee shall not be empowered to alter the terms of this Agreement. The continuation of the Committee shall be at the discretion of the Parties as deemed appropriate to further the registration and commercialisation activities in the Territory.

## **ARTICLE 11 PATENTS**

11.1.

- 11.1.1. Acorda shall have the first right to file, prosecute and maintain the Elan Patent Rights in Elan's name, using patent counsel selected by Acorda, and shall be responsible for the payment of all related patent filing, prosecution and maintenance costs, subject to this Article 11.1.1. Upon Acorda's request, Elan shall reasonably cooperate in the filing, prosecution or maintenance of any patent application or patent included in the Elan Patent Rights. If Acorda elects not to file, prosecute or maintain a patent application or patent included in the Elan Patent Rights in any particular country, it shall provide Elan with written advance notice sufficient to avoid any loss or forfeiture, or at least 60 days notice, and Elan shall have the right, but not the obligation, at its sole expense, to file, prosecute or maintain such patent application or patent in such country in Elan's name. If Elan elects to file, prosecute or maintain a patent or application within the Elan Patent Rights that Acorda has elected not to file, prosecute or maintain, such patent or application in such country shall no longer be deemed an Elan Patent Right for purposes of the license in Article 2 to Acorda.
- 11.1.2. Acorda shall have the first right to file, prosecute and maintain any patent application(s) or patent(s) arising from Joint Inventions and shall be responsible for the payment of all related patent prosecution and maintenance costs. Upon Acorda's request, Elan shall reasonably cooperate in the filing, prosecution or

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk \*, have been separately filed with the Commission.

maintenance of any such patent application or patent. If Acorda elects not to file, prosecute or maintain any such patent application or patent in any particular country, it shall provide Elan with written advance notice sufficient to avoid any loss or forfeiture, or at least 60 days notice, and Elan shall have the right, but not the obligation, at its sole expense, to file, prosecute or maintain such patent application or patent in such country. Thereafter, such patent or patent application in such country shall be deemed solely an Elan Patent Right. In any such case, Acorda shall not grant any Third Party a license under its interest in the applicable Joint Invention without the prior written consent of Elan.

- 11.2. Acorda and Elan shall promptly inform the other in writing of any alleged infringement of which it shall become aware by a Third Party of any patents within the Elan Patent Rights and provide each other with any available evidence of infringement. The Parties will thereafter consult and cooperate to determine a course of action, including, without limitation, the commencement of legal action by either party. However, Acorda shall have the first right to initiate and prosecute such legal action at its own expense and in the name of Elan and Acorda, or to control the defense of any declaratory judgment action relating to Elan Patent Rights and Elan will co-operate with such action at Acorda's request and expense. Elan shall receive [\*] of any such recovery remaining after the deduction by Acorda of the reasonable expenses (including attorney's fees and expenses) incurred in relation to such an infringement proceeding. In the alternative to the foregoing, the Parties may agree to institute such proceedings in their joint names and shall reach agreement as to the proportion in which they will share the proceeds of any such proceedings, and the expense of any costs not recovered, or the costs or damages payable to the Third Party. Should Acorda decide not to pursue such infringers within six (6) months of acquiring knowledge of such infringement, except with respect to Paragraph IV Certifications, in such case the time of notice shall not exceed 20 days, Elan may do so at its expense provided that Acorda shall receive [\*] of any such recovery remaining after the deduction by Elan of the reasonable expenses (including attorney's fees and expenses) incurred in relation to such an infringement proceeding. Acorda will co-operate with such action at Elan's request and expense. The Party involved in any such claim, suit or proceeding, shall keep the other Party hereto reasonably informed of the progress of any such claim, suit or proceeding. For any such legal action or defense, in the event that any Party is unable to initiate, prosecute, or defend such action solely in its own name, the other Party will join such action voluntarily and will execute all documents necessary for the Party to prosecute, defend and maintain such action.

11.3.

- 11.3.1 In the event that (I) a claim or proceedings are brought against Acorda and/or Elan by a Third Party alleging that the manufacture, sale, distribution or use of the Product in the Territory infringes the patent rights of such Third Party, and such alleged infringement results from the use of the Elan Intellectual Property, and (II) as of the date the Specifications for the Product have been agreed, Elan was or should reasonably have been aware of such Third Party patent rights, the following shall apply as regards the Third Party claim, including without

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk \*, have been separately filed with the Commission.

limitation, reasonable attorney's fees and other out of pocket expenses of the litigation, including the fees and expenses incurred by Elan and Acorda (" **Patent Expenses** "):

- 11.3.1.1 if Elan or its subcontractor is manufacturing the Product, Acorda shall bear the [\*\*] of Patent Expenses; Elan and Acorda shall bear the remaining Patent Expenses equally;
- 11.3.1.2 if Elan or its subcontractor is not manufacturing the Product, Acorda shall discharge the Patent Expenses. Acorda shall be entitled to credit the Patent Expenses from up to [\*\*] of the royalty otherwise payable to Elan pursuant to Article 5.6 and may carry forward any such uncredited Patent Expenses to be credited against up to [\*\*] of the royalty otherwise payable to Elan pursuant to Article 5.6 until fully expended; Elan and Acorda shall bear the remaining Patent Expenses equally.

During the term of this Agreement, Acorda shall have the first right but not the obligation to defend the proceedings referred to in this paragraph and Elan will co-operate with such action at Acorda's request and expense. In such event Acorda shall keep Elan advised of all material developments in the said proceedings and shall not settle or compromise such proceedings without the consent of Elan which shall not be unreasonably withheld or delayed. Should Acorda decide not defend such proceedings, Elan may do so and Acorda will co-operate with such action at Elan's request and expense. In such event Elan shall keep Acorda advised of all material developments in the said proceedings and shall not settle or compromise such proceedings without the consent of Acorda which shall not be unreasonably withheld or delayed.

Any sums payable by Elan to Acorda, or by Acorda to Elan pursuant to this Article 11.3.1 shall be discharged by Elan or Acorda, as the case may be, within thirty (30) days of the appropriate invoice and reasonable supporting documentation being furnished.

- 11.3.2 In the event that a claim or proceedings are brought against Elan and/or Acorda by a Third Party alleging that the manufacture, sale, distribution or use of the Product in the Territory as a result of the use of the Elan Patent Rights or Elan Know-How infringes the patent rights of such a Third Party and Elan should not reasonably have been aware of such Third Party patent rights, Acorda and Elan shall meet to discuss in what manner the said proceedings should be defended and, the manner in which any award for damages, costs and expenses incurred in respect of or arising out of such a claim or proceedings should be borne as between Elan and Acorda.
- 11.3.3 Acorda shall reasonably consider taking such action as is reasonable, such as, to re-formulate or modify the applicable Product so as to avoid infringing the

patent rights of a Third Party, or entering into a licence agreement with such Third Party after due consultation with Elan.

- 11.3.4 Elan shall have no liability to Acorda whatsoever or howsoever arising for any losses incurred by Acorda as a result of having to cease selling Product or having to defer the launch of selling Product, as a result of a court order or settlement entered into pursuant to Article 11.5.

11.4.

- 11.4.1 In the event that a claim or proceedings are brought against Elan by a Third Party alleging that the manufacture, sale, distribution or use of the Product in the Territory infringes the patent rights of such Third Party, and such alleged infringement results from the use of the Acorda Patent Rights or Acorda Know-How, Elan shall promptly advise Acorda of such threat or suit. Acorda shall indemnify Elan against such a claim, including without limitation, reasonable attorney's fees and other expenses of the litigation, provided however, that as of the date the Specifications have been agreed, Acorda was or should reasonably have been aware of such Third Party patent rights; and further provided that Elan shall not acknowledge to the Third Party or to any other person the validity of the patent rights of such a Third Party and shall not compromise or settle any claim or proceedings relating thereto without the written consent of Acorda. At its option, Acorda may elect to take over the conduct of such proceedings from Elan.
- 11.4.2 In the event that a claim or proceedings are brought against Elan by a Third Party alleging that the manufacture, sale, distribution or use of the Product in the Territory solely as a result of the use of the Acorda Patent Rights or Acorda Know-How infringes the patent rights of such a Third Party and Acorda should not reasonably have been aware of such Third Party patent rights, Acorda and Elan shall meet to discuss in what manner the said proceedings should be defended and, the manner in which any award for damages, costs and expenses incurred in respect of or arising out of such a claim or proceedings should be borne as between Elan and Acorda.
- 11.4.3 In the event that a claim or proceedings are brought against Elan by a Third Party alleging that the manufacture, sale, distribution or use of the Product in the Territory infringes any patents held by such Third Party and Acorda or its Designee is manufacturing the Product, and the claim or proceeding results from the use of the patent rights or know-how of Acorda or its Designee (and not the Elan Intellectual Property), Elan shall promptly advise Acorda of such threat or suit. Acorda shall indemnify Elan against such a claim, including without limitation, reasonable attorney's fees and other expenses of the litigation; provided that Elan shall not acknowledge to the Third Party or to any other person the validity of the patent rights of such a Third Party and shall not compromise or settle any claim or proceedings relating thereto without the written consent of Acorda. At its option, Acorda may elect to take over the conduct of such proceedings from Elan.

11.5. In the event that a claim or proceedings are brought against either Party by a Third Party alleging that the sale, distribution or use of the Product in the Territory as a result of the use of the Joint Inventions infringes the patent rights of such a Third Party, Acorda and Elan shall meet to discuss in what manner the said proceedings should be defended and the manner in which any award for damages, costs and expenses incurred in respect of or arising out of such a claim or proceedings should be borne as between Elan and Acorda, provided, however, that Acorda shall have the first right to control the defense of such action relating to Joint Inventions and Elan will co-operate with such action at Acorda's request and expense. Neither Party shall acknowledge to a Third Party or to any other person the validity of the patent rights of such a Third Party, the invalidity of the Elan Patent Rights or the Acorda Patent Rights and shall not compromise or settle any claim or proceedings relating thereto without the written consent of the other Party, such consent not to be unreasonably withheld or delayed. The Parties shall co-operate in relation to all material aspects of such litigation or other proceedings and shall meet to discuss in what manner the said proceedings should be defended. If one Party has control of the litigation or other proceeding pursuant to the terms of this Agreement and the other Party wishes to retain separate representation, the latter Party shall bear the costs of such representation.

11.6. Acorda agrees to mark all Product it sells or distributes pursuant to this Agreement with applicable patent numbers or otherwise in accordance with the applicable statute or regulations in the country or countries of manufacture and sale thereof.

## **ARTICLE 12 SUNDY CLAUSES**

12.1. Secrecy:

12.1.1 Any Confidential Information pertaining to the Product that has been or will be communicated or delivered by Elan to Acorda, and any information from time to time communicated or delivered by Acorda to Elan, including, without limitation, trade secrets, business methods, and cost, supplier, manufacturing and customer information, shall be treated by Acorda and Elan, respectively, as Confidential Information, and shall not be disclosed or revealed to any Third Party whatsoever or used in any manner except as expressly provided for herein; provided, however, that such Confidential Information shall not be subject to the restrictions and prohibitions set forth in this section to the extent that such Confidential Information:

12.1.1.1 is available to the public in public literature or otherwise, or after disclosure by one Party to the other becomes public knowledge through no default of the Party receiving such confidential information; or

12.1.1.2 was known to the Party receiving such confidential information prior to the receipt of such confidential information by such Party, whether received before or after the date of this Agreement; or

- 12.1.1.3 is obtained by the Party receiving such confidential information from a Third Party not subject to a requirement of confidentiality with respect to such confidential information; or
- 12.1.1.4 is required to be disclosed pursuant to: (A) any order of a court having jurisdiction and power to order such information to be released or made public; or (B) any lawful action of a governmental or regulatory agency.
- 12.1.2 Each Party shall take all such precautions with Confidential Information disclosed to it by the other Party as it normally takes with its own confidential information to prevent any improper disclosure of the Confidential Information disclosed to it by the other Party to any Third Party; provided, however, that such confidential information may be disclosed within the limits required to obtain any authorisation from the FDA or any other United States of America or foreign governmental or regulatory agency or, with the prior written consent of the other Party, which shall not be unreasonably withheld, or as may otherwise be required in connection with the purposes of this Agreement.
- 12.1.3 Notwithstanding the above, each Party hereto may use or disclose Confidential Information disclosed to it by the other Party to the extent such use or disclosure is reasonably necessary in filing or prosecuting patent applications, prosecuting or defending litigation, complying with applicable governmental regulations or otherwise submitting information to tax or other governmental authorities, conducting clinical trials, or making a permitted sub-liscence or otherwise exercising its rights hereunder, provided that if a Party is required to make any such disclosure of the other party's Confidential Information, other than pursuant to a confidentiality agreement, it will give reasonable advance notice to the latter Party of such disclosure and, save to the extent inappropriate in the case of patent applications and regulatory submissions, will use its best efforts to secure confidential treatment of such information prior to its disclosure (whether through protective orders or otherwise).
- 12.1.4 Each Party agrees that it will not use, directly or indirectly, any Confidential Information disclosed by the other Party pursuant to this Agreement or the Supply Agreement, other than as expressly provided herein or in the Supply Agreement.
- 12.1.5 Acorda and Elan will not publicise the existence of this Agreement in any way without the consent of the other, which consent shall not be unreasonably withheld or delayed, subject to the disclosure requirements of applicable laws and regulations; provided, however, that it is understood that the Parties or their Affiliates may make disclosure of this Agreement and the terms hereof in any filings required by the SEC, may file this Agreement as an exhibit to any filing with the SEC and may distribute any such filing in the ordinary course of its business, provided, further, that to the maximum extent allowable by SEC rules and regulations, the Parties shall seek to maintain the confidentiality

obligations set forth herein and shall redact any confidential information set forth in such filings. In the event that either Party wishes to make an announcement concerning the Agreement, that Party shall seek the consent of the other Party, which consent shall not be unreasonably withheld or delayed and shall not be required to the extent the text of the announcement relating to this Agreement has previously been agreed to by the other Party. The terms of any such announcement shall be agreed in good faith.

12.2. Assignments/ Subcontracting :

- 12.2.1 Subject to the provisions of this Article 12.2, each party be entitled without the consent of the other:
- 12.2.1.1 to subcontract or delegate the whole or any part of its duties hereunder to its Affiliate(s) (but shall remain responsible for its obligations under this Agreement); and/or
  - 12.2.1.2 to assign this Agreement to its Affiliate, provided that such assignment has no material adverse tax implications for the other party or parties hereto, and provided further that the assigning Party shall remain liable and responsible with such assignee to the other Party for the performance of any obligations, representations or warranties delegated, contracted, assigned or otherwise transferred to any such assignee.
- 12.2.2 Elan may, but shall not be obliged to, assign its rights and obligations under this Agreement to a Permitted Assignee (as such term is defined in the Supply Agreement) of the Supply Agreement.
- 12.2.3 Each Party may assign all (but not a portion) of its rights and obligations under this Agreement to an entity that acquires all or substantially all of its business or assets to which this Agreement pertains, whether by merger, reorganisation, acquisition, sale or otherwise.
- 12.2.4 Except as provided for in this Article 12.2, this Agreement may not be assigned by a party without the prior written consent of the other Party, which shall not be unreasonably withheld or delayed.
- 12.2.5 Any permitted assignee of a Party under this Article 12.2 shall assume all related obligations of its assignor under this Agreement.

12.3. Parties bound :

This Agreement shall be binding upon and enure for the benefit of Parties hereto, their successors and permitted assigns.

12.4. Severability :

If any provision in this Agreement is agreed by the Parties to be, or is deemed to be, or becomes invalid, illegal, void or unenforceable under any law that is applicable hereto, (i) such provision will be deemed amended to conform to applicable laws so as to be valid and enforceable or, if it cannot be so amended without materially altering the intention of the Parties, it will be deleted, with effect from the date of such agreement or such earlier date as the Parties may agree, and (ii) the validity, legality and enforceability of the remaining provisions of this Agreement shall not be impaired or affected in any way.

12.5. Duration and Termination :

12.5.1

12.5.1.1 Subject to the other provisions of Article 12.5, this Agreement shall remain in full force and effect for a period commencing as of the date of this Agreement and shall expire on a country by country basis on the latest of:

- (a) fifteen (15) years starting from the Amendment Date;
  - (b) expiry of the last to expire patent included in the Elan Patent Rights in that country; and
  - (c) the existence of Competition in that country
- (the “Initial Period” ).**

12.5.1.2 At the end of the Initial Period, the Agreement may be continued for five (5) year terms by the consent of the Parties, which consent shall not be unreasonably withheld or delayed. The Party requiring the extension shall serve two (2) years written notice on the other prior to the end of the Initial Period or any additional five (5) year period.

12.5.2 The Agreement shall be subject to earlier termination in accordance with the following provisions:

12.5.2.1 Acorda may terminate this Agreement in its entirety or with respect to any country with thirty (30) days prior written notice to Elan prior to Regulatory Approval, and with ninety (90) days prior written notice to Elan at any time thereafter;

12.5.2.2 subject to the determination in an arbitration that Acorda has breached the applicable provisions, Elan may terminate the Agreement for the applicable region(s) or country or countries of the Territory if Acorda breaches the provisions of Article 2.11.3, or Acorda indicates to Elan pursuant to Article 2.11.4.3, that it does not intend to obtain Regulatory Approval and commercialise the Product, and Elan does not exercise its option to take a licence to the

- 12.5.3 In addition to the rights of early or premature termination provided for elsewhere in this Agreement, in the event that any of the terms or provisions hereof are incurably breached by either Party, the non-breaching Party may immediately terminate this Agreement by written notice. An incurable breach shall be committed when either Party is dissolved, liquidated, discontinued, becomes insolvent, or when any proceeding is filed or commenced by either Party under bankruptcy, insolvency or debtor relief laws. In the event of any other breach, the non-breaching Party may terminate this Agreement by the giving of written notice to the breaching Party that this Agreement will terminate on the sixtieth (60th) day from notice unless cure is sooner effected. If the breaching Party has proposed a course of action to rectify the breach and is acting in good faith to rectify same but has not cured the breach by the sixtieth (60th) day, the said period shall be extended by such period as is reasonably necessary to permit the breach to be rectified.
- 12.5.4 Upon exercise of those rights of termination as specified in Article 12.5.2, or Article 12.5.3, in any country or countries or the entire Agreement as the case may be, this Agreement shall, subject to the other provisions of the Agreement and Article 12.5.5, automatically terminate forthwith in the applicable country or countries or the entire Agreement as the case may be, and be of no further legal force or effect.
- 12.5.5 Upon termination of the Agreement:
- 12.5.5.1 any sums that were due from Acorda to Elan prior to the exercise of the right to terminate this Agreement (including but not limited to, Research and Development Costs and such additional expenses pursuant to Article 5.7 in each case incurred prior to the notice of termination, shall be paid in full within sixty (60) days of termination of this Agreement;
  - 12.5.5.2 all confidentiality provisions set out herein shall remain in full force and effect for a period of five (5) years;
  - 12.5.5.3 all representations and warranties shall insofar as appropriate remain in full force and effect;
  - 12.5.5.4 the rights of inspection and audit shall continue in force for the period referred to in the relevant provisions of this Agreement;
  - 12.5.5.5 termination of this Agreement for any reason shall not release any Party hereto from any liability which, at the time of such termination, has already accrued to the other Party or which is attributable to a period prior to such termination nor preclude either

Party from pursuing all rights and remedies it may have hereunder or at law or in equity with respect to any breach of this Agreement;

- 12.5.5.6 save and except as is necessary to enable Elan to exercise the licences granted by Acorda to Elan pursuant to Article 2.9 and Article 2.11.3, upon any termination of this Agreement, Acorda and Elan shall promptly return to the other Party all Confidential Information received from the other Party (except one copy of which may be retained for archival purposes); and
- 12.5.5.7 in the event this Agreement is terminated for any reason, Acorda and its Designees shall have the right for a period of six (6) months from termination to sell or otherwise dispose of the stock of any Product then on hand, which such sale shall be subject to the terms of the Supply Agreement.
- 12.5.5.8 Article 1, Article 2.2, Article 8, Article 11.1.1, 11.1.2, 11.2, 11.3, 11.4, 11.5, and Article 12 shall survive the termination or expiration of this Agreement for any reason.

#### 12.5.6

- 12.5.6.1 In the event of termination of the licences to the Elan Intellectual Property granted by Elan to Acorda pursuant to Article 2.11.3 as to any country or countries or in the event of the termination of this Agreement by Elan pursuant to Article 12.5.3, Acorda shall at the option of Elan grant a licence to the Acorda Patent Rights and the Acorda Know-How, including the data, information, Regulatory Applications, Regulatory Approvals, pricing and reimbursement approvals to enable Elan to commercialise the Products in such country or countries on the terms set out in Article 2.11.3 and to the Trademark on the terms set out in Article 2.9.

#### 12.6. Force Majeure :

Neither Party to this Agreement shall be liable for delay in the performance of any of its obligations hereunder if such delay results from causes beyond its reasonable control, including, without limitation, acts of God, fires, strikes, acts of war, or intervention of a Government Authority, non availability of raw materials, but any such delay or failure shall be remedied by such Party as soon as practicable.

#### 12.7. Relationship of the Parties :

Nothing contained in this Agreement is intended or is to be construed to constitute Elan and Acorda as partners or joint venturers or either Party as an employee of the other. Neither Party hereto shall have any express or implied right or authority to assume or create any obligations on behalf of or in the name of the other Party or to bind the other Party to any contract, agreement or undertaking with any Third Party.

12.8. Amendments :

No amendment, modification or addition hereto shall be effective or binding on either Party unless set forth in writing and executed by a duly authorised representative of both Parties.

12.9. Waiver :

No waiver of any right under this Agreement shall be deemed effective unless contained in a written document signed by the Party charged with such waiver, and no waiver of any breach or failure to perform shall be deemed to be a waiver of any future breach or failure to perform or of any other right arising under this Agreement.

12.10. No effect on other agreements :

Except as specifically set forth herein, no provision of this Agreement shall be construed so as to negate, modify or affect in any way the provisions of any other agreement between the Parties unless specifically referred to, and solely to the extent provided, in any such other agreement.

12.11. Applicable Law :

This Agreement is construed under and ruled by the laws of the State of New York, excluding its conflict of laws rules. For the purpose of this Agreement the Parties submit to the jurisdiction of the United States District Court for the State of New York.

12.12. Notice :

12.12.1 Any notice to be given under this Agreement shall be sent in writing in English by registered airmail or faxed to:

Elan at

c/o Elan International Services Ltd.  
102 St. James Court  
Flatts,  
Smiths FL04  
Bermuda

Attention: Secretary  
Fax: +1 441 292 2224

Acorda at:

Acorda Therapeutics, Inc.  
15 Skyline Drive  
Hawthorne, New York 10532  
United States of America  
Attention: Chief Executive Officer  
Fax : +1 914.347.4560

or to such other address (es) and fax numbers as may from time to time be notified by either Party to the other hereunder.

12.12.2 Any notice sent by registered air-mail shall be deemed to have been delivered within seven (7) working days after despatch and any notice sent by fax shall be deemed to have been delivered within twenty four (24) hours of the time of the despatch. Notice of change of address shall be effective upon receipt.

12.13. No Implied Rights :

No rights or licences are granted or deemed granted hereunder or in connection herewith, other than those rights expressly granted in this Agreement.

12.14. Arbitration :

Any dispute under this Agreement which is not settled by the Committee or the CEOs pursuant to Article 10 or otherwise by mutual consent shall be finally settled by binding arbitration, conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association by three (3) arbitrators appointed in accordance with said rules. The arbitration shall be held in New York, New York and at least one of the arbitrators shall be an independent expert in pharmaceutical product development and marketing (including clinical development and regulatory affairs). The arbitrators shall determine what discovery will be permitted, consistent with the goal of limiting the cost and time which the Parties must expend for discovery; provided the arbitrators shall permit such discovery as they deem necessary to permit an equitable resolution of the dispute. Any written evidence originally in a language other than English shall be submitted in English translation accompanied by the original or a true copy thereof. The costs of the arbitration, including administrative and arbitrators' fees, shall be shared equally by the Parties and each Party shall bear its own costs and attorneys' and witness' fees incurred in connection with the arbitration. A disputed performance or suspended performances pending the resolution of the arbitration must be completed within thirty (30) days following the final decision of the arbitrators or such other reasonable period as the arbitrators determine in a written opinion. The parties shall use all reasonable efforts to ensure that any arbitration subject to this Article 12.14 shall be completed within one (1) year from the filing of notice of a request for such arbitration. The arbitration proceedings and the decision shall not be made public without the joint consent of the Parties and each Party shall maintain the confidentiality of such proceedings and decision, subject to any contrary provision of this Agreement or unless otherwise permitted by the other Party. The Parties agree that the decision shall be the sole, exclusive and binding remedy between them regarding any and all disputes, controversies, claims and counterclaims presented to the arbitrators. Application may be made to any court having jurisdiction over the Party (or its assets) against whom the decision is rendered for a judicial recognition of the decision and an order of enforcement .

12.15. Independent Development :

Expect as expressly set forth in Article 2.2, nothing in this Agreement will impair Acorda's right to independently acquire, license, develop for itself, or have others develop for it, intellectual

property and technology performing similar functions as the Elan Intellectual Property or to market and distribute products based on such other intellectual property and technology.

12.16. Further Assurances :

At any time or from time to time on and after the date of this Agreement, each party shall at the request of the other (i) delivery to the other such records, data or other documents consistent with the provisions of this Agreement, (ii) execute, and delivery or cause to be delivered, all such consents, documents or further instruments of transfer or licence, and (iii) take or cause to be taken all such actions, as such party may reasonably deem necessary or desirable in order for such party to obtain the full benefits of this Agreement and the transactions contemplated hereby.

12.17. Entire Agreement :

This Agreement including its Appendices, Schedules and Exhibits, together set forth the entire agreement and understanding of the Parties with respect to the subject matter hereof, and supersedes all prior discussions, agreements and writings in relating thereto, including the letter of agreement of 31<sup>st</sup> December 1996, the SCI Agreement, the MS Agreement (as assigned and assumed) and any term sheets or memoranda of understandings relating to any of the foregoing.

12.18. Counterparts :

This Agreement may be executed in two counterparts, each of which shall be deemed an original and which together shall constitute one instrument.

\*\*\*

**IN WITNESS THEREOF** the Parties hereto have executed this Agreement in duplicate.

**SIGNED**

---

for and on behalf of  
**ELAN CORPORATION, PLC.**

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SIGNED**

/s/ Ron Cohen \_\_\_\_\_

for and on behalf of  
**ACORDA THERAPEUTICS, INC.**

Name: Ron Cohen  
Title: President & Chief Executive Officer

**SCHEDULE 1 ACORDA PATENT RIGHTS****GRANTED PATENT**

<u>Country</u>	<u>Patent Number</u>	<u>Grant Date</u>	<u>Status</u>	<u>Inventors</u>
US	5,952,357	14-Sept-1999	Issued	Blass, J. et al.
Title: TREATING DISEASES OF THE ANTERIOR HORN CELLS				
US	5,545,648	13-Aug-1996	Issued	Hansebout, R, et al.
Title: THE USE OF 4-AMINOPYRIDINE IN THE TREATMENT OF A NEUROLOGICAL CONDITION				
AU	676,251	03-June-1997	Granted	Hansebout, R, et al.
Title: THE USE OF 4-AMINOPYRIDINE IN THE TREATMENT OF A NEUROLOGICAL CONDITION				
CZ	28441	20-Dec-1993	Granted	Hansebout, R, et al.
Title: THE USE OF 4-AMINOPYRIDINE IN THE TREATMENT OF A NEUROLOGICAL CONDITION				
EP	0626848	04-June-2003	Granted	Hansebout, R, et al.
Title: THE USE OF 4-AMINOPYRIDINE IN THE TREATMENT OF A NEUROLOGICAL CONDITION				
HU	219583	19-Mar-2001	Granted	Hansebout, R, et al.
Title: THE USE OF 4-AMINOPYRIDINE IN THE TREATMENT OF A NEUROLOGICAL CONDITION				

KP	31250	25-Aug-1997	Granted	Hansebout, R, et al.
Title: THE USE OF 4-AMINOPYRIDINE IN THE TREATMENT OF A NEUROLOGICAL CONDITION				
KR	301415	25-June-2001	Granted	Hansebout, R, et al.
Title: THE USE OF 4-AMINOPYRIDINE IN THE TREATMENT OF A NEUROLOGICAL CONDITION				
NO	308.644	25-June-2001	Granted	Hansebout, R, et al.
Title: THE USE OF 4-AMINOPYRIDINE IN THE TREATMENT OF A NEUROLOGICAL CONDITION				
NZ	258844	22-Sept-1997	Granted	Hansebout, R, et al.
Title: THE USE OF 4-AMINOPYRIDINE IN THE TREATMENT OF A NEUROLOGICAL CONDITION				
RU	2160590	23-May-2000	Granted	Hansebout, R, et al.
Title: THE USE OF 4-AMINOPYRIDINE IN THE TREATMENT OF A NEUROLOGICAL CONDITION				
SK	280922	20-Dec-1993	Granted	Hansebout, R, et al.
Title: THE USE OF 4-AMINOPYRIDINE IN THE TREATMENT OF A NEUROLOGICAL CONDITION				

**PENDING PATENT APPLICATIONS**

BG	99047	20-Dec-1993	Pending	Hansebout, R, et al.
Title: THE USE OF 4-AMINOPYRIDINE IN THE TREATMENT OF A NEUROLOGICAL CONDITION				
CA	2,085,785	20-Dec-1993	Pending	Hansebout, R, et al.
Title: THE USE OF 4-AMINOPYRIDINE IN THE TREATMENT OF A NEUROLOGICAL CONDITION				
JP	6-514637	20-Dec-1993	Pending	Hansebout, R, et al.
Title: THE USE OF 4-AMINOPYRIDINE IN THE TREATMENT OF A NEUROLOGICAL CONDITION				

## **SCHEDULE 2 ASSIGNMENT AGREEMENT**

The remainder of this page is intentionally blank. The pages of this Schedule are numbered out of sequence.

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

### SCHEDULE 3 ELAN PATENT RIGHTS

1806	Formulations and their use in the treatment of neurological diseases	<u>Pending:</u> Canada 2054822 Ireland 3952/90 Japan 349324/1991
		<u>Issued:</u> Australia 657706 Europe 484186 New Zealand 240439 South Africa 91/8711 United States 5370879 5540938 5580580
[***]	[***]	Pending: [***] [***]

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

#### **SCHEDULE 4 NDA TIMELINE**

[\*\*\*\*\*]

**SCHEDEULE 5 RUSH/ACORDA LICENSE**

The remainder of this page is intentionally blank. The pages of this Schedule are numbered out of sequence.

## **SCHEDULE 6 RUSH PAYMENTS AGREEMENT**

The remainder of this page is intentionally blank. The pages of this Schedule are numbered out of sequence.

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

## SCHEDULE 7 SPECIFICATIONS

### Current Analytical Methods and Specifications For Finished Product Contained in the US Drug Master File

[\*\*\*\*]

56

---

## **SCHEDULE 8 SUPPLY AGREEMENT**

The remainder of this page is intentionally blank. The pages of this Schedule are numbered out of sequence.

## **SCHEDULE 9 TECHNOLOGY TRANSFER RESPONSIBILITES**

### **ELAN & ACORDA RESPONSIBILITIES IN CONNECTION WITH FAMPRIDINE DRUG PRODUCT TECHNOLOGY TRANSFER TO PATHON, FAMPRIDINE STABILITY PROGRAM AT CARDINAL (FORMERLY MAGELLAN) & FOR API MANUFACTURERS**

#### **ELAN RESPONSIBILITIES DURING TECHNOLOGY TRANSFER TO PATHON**

- Elan will send to Patheon API, standards and samples of drug product batches required to successfully transfer the drug substance and drug product methods
- Elan will test and release API lots for the Patheon technology transfer studies
- Elan will send copies to Patheon of methods, specifications, method validation reports, batch formulae, component specifications, tablet tooling drawings, and process information as needed, to initiate method and process technology transfer
- Elan will review and approve method and process technology transfer protocols prepared by Patheon
- Elan will approve methods and process technology transfer reports
- Elan will consult with Patheon on issues as they arise during the method and process technology transfer; if required, an Elan analyst or process chemist will travel to Patheon to provide on-site assistance and training on the methods
- Elan will review analytical data and executed batch records generated from Patheon's technology transfer work in connection with batch release by Patheon

## **ACORDA RESPONSIBILITIES DURING TECHNOLOGY TRANSFER TO PATHON**

- Acorda will manage Patheon project timelines
- Acorda will provide project management and technology assessment review support during method and process technology transfer
- Acorda will manage and approve the budget for the Patheon technology transfer work
- Acorda will consult with Patheon on issues as they arise during the method and process technology transfer; if required, an Acorda representative will travel to Patheon to participate in technical/project team meetings

## **ELAN RESPONSIBILITIES FOR PATHON AFTER SUCCESSFUL TECHNOLOGY TRANSFER**

- Elan will provide technical support and guidance to Patheon if technical issues arise
- Elan will perform release testing and regulatory release of API lots for the Patheon process validation studies if validation occurs prior to NDA approval

## **ACORDA RESPONSIBILITIES FOR PATHON AFTER SUCCESSFUL TECHNOLOGY TRANSFER**

- Acorda will review batch record and quality control documentation in connection with regulatory release by Patheon of process validation batches
- Acorda will manage the Patheon project
- Acorda will be responsible for compliance oversight of Patheon

- Acorda will review and approve all validation protocols and final reports generated by Patheon, as needed
- Acorda will review analytical data and batch records generated by Patheon in connection with regulatory release by Patheon
- Acorda will provide project management and technology assessment oversight and review support to Patheon
- Acorda will prepare the CTD Quality section for the NDA as it pertains to Patheon

#### **ELAN RESPONSIBILITIES FOR CARDINAL (FORMERLY MAGELLAN) STABILITY PROGRAM**

- Elan will review and approve Cardinal stability protocols
- Elan will review data generated from Cardinal's analytical testing as needed
- Elan will review stability data tables generated from the Cardinal stability studies
- Elan will notify Acorda of any out-of-specification results reported to them by Cardinal or discovered during the Elan review of stability data
- Elan will consult with Cardinal on issues as they arise during the stability studies; if required, an Elan analyst will travel to Cardinal to provide on-site assistance and training on the methods
- Elan will audit Cardinal and will be responsible for compliance oversight during the Cardinal stability studies
- Elan will participate and provide technical support during product-specific PAI activities at Cardinal as needed

## **ACORDA RESPONSIBILITIES FOR CARDINAL (FORMERLY MAGELLAN) STABILITY PROGRAM**

- Acorda will participate in discussions with Cardinal and Elan on technical and project management issues
- Acorda will review stability protocols and final stability reports from the Cardinal studies
- Acorda will manage and approve the budget for the Cardinal stability studies
- Acorda will consult with Cardinal and Elan on issues as they arise during stability studies; if required, an Acorda representative will travel to Cardinal to participate in technical/project team meetings
- Acorda may participate in technical meetings with Cardinal and/or compliance audits that pertain to fampridine stability studies

## **ELAN RESPONSIBILITIES FOR PROCUREMENT OF FAMPRIDINE API**

- Elan will provide technical advice to API manufacturers (Regis and Uetikon)
- Elan will perform regulatory release testing and will release batches for all incoming lots of API to be used in routine production at Elan and through process validation at Patheon (if validation takes place prior to NDA approval)
- Elan will oversee and review process validation activities at the API manufacturers
- Elan will participate and provide technical support during product-specific PAI activities at the API manufacturers as needed
- Elan will review API manufacturer's regulatory documentation in connection with DMF submission by the API manufacturers in connection with NDA submission
- Elan will notify Acorda of any out-of-specification results reported to them by API manufacturers
- Elan will be responsible for auditing and assuring cGMP compliance at the API manufacturers
- Elan will purchase API and manage supply chain logistics in connection with API to be used in Elan drug product production

- Elan will purchase and manage supply chain logistics in connection with API to be used in Patheon drug product only prior to NDA approval (in connection with technology transfer work and through process validation if validation occurs before NDA approval)

#### **ACORDA RESPONSIBILITIES FOR PROCUREMENT OF FAMPRIDINE API**

- Acorda will participate in discussions with API manufacturers on technical and project timeline issues
- Acorda will provide technical review support in connection with preparation of technical reports, regulatory documentation and validation documentation in connection with commercial scale-up and process optimization activities at the API manufacturers
- Acorda will participate in compliance audits of API manufacturers
- Acorda will review and advise Elan on budget matters in connection with API manufacturing and development
- Acorda will consult with Elan and API manufacturers on issues as they arise during development; if required, an Acorda representative will travel to the API manufacturers to participate in technical/project team meetings
- Acorda will be responsible for purchasing API to be used in commercial production of Patheon drug product

62

---

#### **Exhibit 10.9**

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission

#### **EXECUTION COPY**

**Date: September 2003**

**ELAN CORPORATION, PLC.**

**AND**

**ACORDA THERAPEUTICS, INC.**

**SUPPLY AGREEMENT**

*Fampridine SR*

---

## INDEX

CLAUSE 1	PRELIMINARY
CLAUSE 2	EXCLUSIVE SUPPLY
CLAUSE 3	REGULATORY MATTERS
CLAUSE 4	FORECASTS AND ORDERS
CLAUSE 5	SUPPLY OF THE PRODUCT
CLAUSE 6	DISPUTES AS TO SPECIFICATION
CLAUSE 7	SECOND SOURCE
CLAUSE 8	ADVERSE EVENTS AND PRODUCT RECALL
CLAUSE 9	FINANCIAL PROVISIONS
CLAUSE 10	PAYMENTS, REPORTS AND AUDITS
CLAUSE 11	DURATION AND TERMINATION
CLAUSE 12	CONSEQUENCES OF TERMINATION
CLAUSE 13	REPRESENTATIONS AND WARRANTIES; INDEMNIFICATION
CLAUSE 14	MISCELLANEOUS PROVISIONS
SCHEDULE 1	MANUFACTURING COST

---

**THIS SUPPLY AGREEMENT** is made the

September 2003

**BETWEEN:**

- (1) **Elan Corporation, plc.**, a public limited company incorporated under the laws of Ireland, and having its registered office at Lincoln House, Lincoln Place, Dublin 2, Ireland ("Elan"); and
- (2) **Acorda Therapeutics, Inc.**, a corporation organized under the laws of the State of Delaware and having its principal office at 15 Skyline Drive, Hawthorne, New York 10532, United States of America ("Acorda").

**RECITALS:**

- (A) Elan and Acorda have entered into a Licence Agreement concerning the Product (as each of those terms are defined below).
- (B) Elan is prepared to manufacture and supply the Product to Acorda for onward commercial supply.
- (C) Elan and Acorda are desirous of entering into this Agreement to give effect to the arrangements described at Recitals (A) and (B).

**NOW IT IS HEREBY AGREED AS FOLLOWS:**

**CLAUSE 1 PRELIMINARY**

1.1. Definitions:

"**Act**" shall mean the United States Federal Food Drug and Cosmetic Act of 1934, and the rules and regulations promulgated thereunder, or any successor act, as the same shall be in effect from time to time.

"**Affiliate**" shall mean any corporation or entity controlling, controlled or under common control with Elan or Acorda, as the case may be. For the purposes of this Agreement, "control" shall mean the direct or indirect ownership of more than 50% of the issued voting shares or other voting rights of the subject entity to elect directors, or if not meeting the preceding criteria, any entity owned or controlled by or owning or controlling at the maximum control or ownership right permitted in the country where such entity exists.

"**Agreement**" shall mean this supply agreement (which expression shall be deemed to include the Recitals and Schedules hereto).

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission

“**Batch**” shall mean a specific quantity of Product that is produced according to a single manufacturing order during the same cycle of manufacture, which quantity shall be agreed in the Technical Agreement.

“**cGMP**” shall mean current Good Manufacturing Practice as defined in the Act and FDA guidance documents; or as applicable current Good Manufacturing Practice under applicable regulations in the European Union.

“**EEA**” shall mean the countries comprising the European Economic Area, as the same may change from time to time .

“**Effective Date**” shall mean the date of this Agreement.

“**Elan’s Facility**” shall mean Monksland, Athlone, Co. Westmeath, Ireland or such other facility as Elan may use to perform its obligations hereunder and is in compliance with the NDA and other regulatory requirements.

“**Elan Territory**” shall mean any country or countries in which Elan, or any licensee of Elan other than Acorda, is permitted to commercialise the Product, by virtue of termination of the License Agreement in that country or the grant of a license by Acorda to Elan pursuant to Article 2.11.3 of the License Agreement.

“**EXW**” or “**Ex Works**” shall have the meaning as such term is defined in the ICC Incoterms, 2000, International Rules for the Interpretation of Trade Terms, ICC Publication No. 560.

“**Force Majeure**” shall mean any cause or condition beyond the reasonable control of the party obliged to perform, including acts of God, acts of government (in particular with respect to the refusal to issue necessary import or export licenses), fire, flood, earthquake, war, riots or embargoes, strikes or other labour difficulties affecting a party, or either party’s inability to obtain supplies of components of the Product howsoever arising.

“**FTE**” means Elan’s full time equivalent charging rate for its appropriate employees or consultants from time to time (based on cost without mark-up) which as of the Amendment Date is [\*\*\*] per day.

“**Governmental Authority**” shall mean the FDA and /or all other governmental and regulatory bodies, agencies, departments or entities, whether or not located in the Territory, which regulate, direct or control commercial and other related activities in or with the Territory.

“**Launch Stocks**” shall mean the quantities of stocks of the Product required by Acorda in relation to the launch of the Product following Regulatory Approval in a Major Market, as more fully described in Clause 4.7.

“**Launch Year**” shall mean the period commencing on the date of First Commercial Sale and expiring on the last day of the month that is the twelfth (12<sup>th</sup>) month following the

date in which the First Commercial Sale occurs. For example, if the First Commercial Sale occurs on March 15 of any year, the Launch Year shall commence on March 15 of such year and expire on March 31 of the following year.

“**Licence Agreement**” shall mean that certain Amended and Restated Licence Agreement between Elan and Acorda of even date herewith.

“**Major Market(s)**” shall mean the US, the UK, France, Germany, Italy and Japan.

“**Manufacturing Cost**” shall mean the costs described in **Schedule 1** as they relate to the Product, PROVIDED THAT if Elan is manufacturing the Product for sale in an Elan Territory, in no event shall Manufacturing Cost exceed Elan’s own costs for such manufacture, as calculated based on GAAP.

“**Maximum Capacity**” shall mean Elan’s maximum quarterly manufacturing capacity for the Product from time to time, as agreed in, or determined pursuant to, the Technical Agreement.

“**Minimum Elan Requirements**” shall mean for any Year, at least seventy five percent (75%) of Acorda’s total requirements of the Product .

“**Minor Deficiencies**” shall mean shortfalls or delays that are not inconsistent with industry accepted standards, which standards applicable to the Product shall be clarified in the Technical Agreement.

“**Permitted Elan Assignee**” shall mean any entity that purchases all or substantially all of the assets of Elan’s Facility and has entered into a written agreement with Elan for the benefit of Acorda whereby (inter alia) it represents to Acorda that it is (i) reasonably experienced in the field of pharmaceutical manufacturing (including the existing management of Elan’s Facility), (ii) in possession of sufficient financial resources and liquidity to perform the obligations of Elan under this Agreement and (iii) in good standing with the FDA.

A Permitted Elan Assignee shall also include any entity that has been formed for the purpose of acquiring Elan’s Facility, and shall, following such acquisition, be under the management of individuals reasonably experienced in pharmaceutical manufacturing (including the said existing management), in possession of sufficient financial resources and liquidity to perform the obligations of Elan under this Agreement, and none of which are debarred individuals or entities within the meaning of 21 U.S.C. section 335(a) or (b) and have the capacity of being in good standing with the FDA.

“**Product**” shall mean the oral product developed pursuant to the Project, in final packaged and labelled form for commercial sale or for distribution as promotional samples and as defined in the approved NDA or NDA Equivalent.

“**Recall**” means a company’s removal or correction of a marketed Product that the FDA or equivalent Governmental Authority considers to be in violation of law and against

which such agency might reasonably be expected to initiate legal action (e.g., a seizure). A Recall does not include market withdrawal for other reasons, or a stock recovery.

**“ Serious Failure to Supply ”** shall mean that in a period of a Year, for reasons other than Force Majeure or the default of Acorda, Elan fails on at least two occasions to supply Acorda’s properly forecasted and ordered requirements of the Product in accordance with the terms of this Agreement, except for Minor Deficiencies, and the cumulative shortfall for such Year attributable to such failure(s) is at least 25% of the aggregate amount properly forecasted and ordered from Elan for delivery in such Year.

**“ Term ”** shall mean the term of this Agreement, as set out in Clause 11.

**“ \$ ”** and **“ US\$ ”** shall mean United States Dollars.

**“ Year ”** means each consecutive four Calendar Quarters.

#### 1.2. Further Definitions :

In addition, the following definitions have the meanings in the Clauses corresponding thereto, as set forth below:

<b>Definition</b>	<b>Clause</b>
“Discount”	9.4
“First Approval”	4.1.1
“Manufacturer”	7.1
“Resumption Quarter”	7.6.1
“Second Source”	7.1
“Second Source Quantity”	7.2.1
“Supply Price”	9.3.1
“Technical Agreement”	5.5

#### 1.3. Definitions in Licence Agreement :

Except as otherwise defined in this Agreement, all capitalised terms used in this Agreement shall have the same meaning as in the Licence Agreement.

#### 1.4. Interpretation :

In this Agreement:

- 1.4.1 the singular includes the plural and vice versa, the masculine includes the feminine and vice versa and references to natural persons include corporate bodies, partnerships and vice versa.

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission

- 1.4.2 any reference to a Clause or Schedule, unless otherwise specifically provided, shall be respectively to a Clause or Schedule of this Agreement.
- 1.4.3 the headings of this Agreement are for ease of reference only and shall not affect its construction or interpretation.
- 1.4.4 the expressions “include”, “includes”, “including”, “in particular” and similar expressions shall be construed without limitation.

## CLAUSE 2 EXCLUSIVE SUPPLY

- 2.1. Subject to the terms and conditions of this Agreement, during the Term, Acorda shall purchase its Minimum Elan Requirements of the Product in the Territory from Elan, except as provided in Clause 2.3.
  - 2.2. Subject to the terms and conditions of this Agreement, during the Term, Elan shall not supply the Product to:
    - 2.2.1 any person other than Acorda outside the Elan Territory; or
    - 2.2.2 any person other than Acorda in the Elan Territory who intends, to the actual knowledge of Elan, to sell the Product outside the Elan Territory –
- except as requested by Acorda, **PROVIDED THAT** to extent required by applicable law, Elan shall be permitted to:
- (a) sell the Product to a person in a country which is both part of the Elan Territory and within the EEA, notwithstanding that such person may re-sell the Product in another part of the EEA which is not part of the Elan Territory; and
  - (b) if any country of the EEA is part of the Elan Territory, sell the Product to a person in another country of the EEA which is not part of the Elan Territory, provided further that Elan shall not actively solicit any such sales.
- 2.3. Elan shall not have the obligation to use commercially reasonable efforts to supply the Product where [\*\*\*] of Manufacturing Cost would exceed the Supply Price, subject to Clauses 2.4 and 2.5
  - 2.4. In the event that either party is of the opinion that the circumstances in Clause 2.3 apply or may shortly apply, it shall promptly notify the other. In such event the parties shall meet to discuss, *inter alia*, the manner in which Manufacturing Cost is calculated by Elan and Acorda’s commercialisation plans.
  - 2.5. If after such discussions Elan is of the opinion that if it continues to supply the Product to Acorda, the circumstances in Clause 2.3 will apply, Elan shall promptly formally so notify Acorda. In such event

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission

- 2.5.1 Elan shall use commercially reasonable efforts to supply Acorda with Product the subject of binding orders issued prior to Acorda's receipt of such notification, provided that such orders relate to Product scheduled for delivery in the period of three (3) months after the date of the purchase orders, and that such Product shall be invoiced at the applicable price under Clause 9.2 or 9.3; and
- 2.5.2 After the expiration of the period referred to in Clause 2.5.1, Acorda shall have no further obligation to purchase Product under this Agreement, provide, however, that Acorda may at its option place further purchase orders for delivery during up to a six (6) month period immediately following the period referred to in Clause 2.5.1, subject always to Clause 4 and Clause 5, provided, further, that (i) any such purchase orders are placed not later than three (3) months from the date of Elan's notice under this Clause 2.5; and (ii) any such Product ordered shall be invoiced at a price equal to Manufacturing Cost plus [\*\*].

If following the period referred to in Clause 2.5.2, Acorda wishes to continue to purchase the Product from Elan and Elan is prepared to supply the same, the Parties shall negotiate in good faith the terms of any such supply and purchase.

As from the time of Elan's notice, Acorda shall be entitled to purchase the Product from the Second Source, but without prejudice to binding purchase orders already placed with Elan and subject to the foregoing paragraph.

### **CLAUSE 3 REGULATORY MATTERS**

- 3.1. Elan shall be responsible, at Elan's expense, for filing for and maintaining all license and permits pertinent to Elan's Facility, as distinct from the Regulatory Approvals specific to the Product, without prejudice to Elan's responsibilities under the Licence Agreement in respect of preparation and delivery to Acorda for incorporation into the NDA or any NDA Equivalent, of the CMC Section.
- 3.2. Upon Elan's prior written notice, Acorda shall permit Elan or any Affiliate to have access to the NDA and any NDA Equivalent and Regulatory Approvals and to take photocopies of same, as required by Elan to fulfil reporting requirements or as otherwise may reasonably be required by Elan in connection with this Agreement.
- 3.3. **Inspections or Inquiries by Governmental Authorities.** With respect to Product supplied by it, Elan shall be responsible for all process and equipment validation and quality control tests and procedures required by any Governmental Authority and shall take all steps necessary to pass inspection by any Governmental Authorities in the Major Markets, but without prejudice to Article 6.3 of the License Agreement. Elan shall:
  - 3.3.1. notify Acorda as soon as possible, but in any event within the time period to be set forth in the Technical Agreement, of any notification received by Elan from a Governmental Authority to conduct an inspection of its manufacturing or other

facilities used in the development, manufacturing, packaging, storage or handling of the Product;

- 3.3.2 without delay make available to Acorda a copy of any inspection report received by Elan resulting from any inspection of any of such facilities by such Governmental Authority to the extent such report relates to Product, the formulation, manufacture, testing, storage and delivery of the Product or any premises used by Elan in performing Elan's obligations under this Agreement;
- 3.3.3 provide Acorda with a written copy of any proposed response(s) thereto at least three Business Days prior to submitting such response to any Governmental Authority as well as a copy of the response actually submitted.

Representatives of Acorda or its Designee shall have the right to be present during the inspection and/or during the close-out session with the inspectors. Any Form 483 observations or warning letter related to the Product shall be provided promptly to Acorda, which shall have the right to review and discuss the proposed written response to such 483 observations or warning letter, and a copy of the response actually submitted shall be promptly provided to Acorda. Copies of all other correspondence with any Governmental Authority relating to that any party's activities under this Agreement will be provided to the other party within forty-eight (48) hours.

- 3.4. **Inspection by Acorda / Governmental Authority**. Elan shall make (i) any licenses and permits relating to Elan's Facility; and (ii) that portion of Elan's facility where the Product is manufactured, packaged, tested or stored, including all record and reference samples, available for inspection:

- 3.4.1 by Acorda's duly qualified employee or Designee or, with the consent of Elan, by Acorda's agent or contractor; or
- 3.4.2 by the relevant Governmental Authority.

An inspection under Clause 3.4.1 shall be limited to determining whether there is compliance with cGMP and other requirements of applicable law, including production or quality issues relating to the Product. Any consent required under this Clause 3.4 shall not be unreasonably withheld or delayed.

- 3.5. **Preservation Samples/Retained Samples**. Pursuant to all applicable laws, rules and regulations and to the Specifications, Elan shall assign and apply lot numbers and shall take from each lot of (i) the API used to manufacture Product pursuant to this Agreement; (ii) inactive ingredients used in the manufacture of Product pursuant to this Agreement; and (iii) the Product shipped to Acorda or its designee pursuant to this Agreement, preservation samples/retained samples. Elan shall retain and store the particular lot of API, other ingredients or Product, as applicable, in accordance with FDA and other applicable regulations, which currently provide for a period expiring no earlier than two years after the expiration of the shelf life of the particular lot of Product shipped to Acorda or its Designee pursuant to this Agreement. Preservation samples/retained

samples, as referred to herein, do not include samples retained for purposes of stability testing.

- 3.6. Elan shall at its option be entitled to change the manufacturing process or site for manufacture of the Product, provided that (a) Elan provides Acorda with all required information in form and substance necessary to file any related amendments or supplements to the NDA or any NDA Equivalent or, if applicable, Elan files with applicable regulatory authorities any required amendments or supplements to any DMF; (b) no such change shall take effect until all requisite regulatory approvals have been obtained, and (c) Elan shall be responsible for the costs associated with such change. Acorda shall reasonably co-operate with Elan in obtaining any such changes requested.

#### **CLAUSE 4 FORECASTS AND ORDERS**

- 4.1. **Forecasts**. Acorda shall provide Elan with bona fide written forecasts of its estimated Minimum Elan Requirements of the Product as follows:

- 4.1.1 within eighteen (18) months prior to the anticipated date of first Regulatory Approval in any Major Market (“**First Approval**”), Acorda shall provide Elan with an eighteen (18) month forecast, broken down on a quarterly basis, for the period beginning with the anticipated date of First Commercial Sale in such Major Market (which date shall be specified in the forecast);
- 4.1.2 thereafter, every three months until First Approval, Acorda shall provide Elan with an updated forecast on a quarterly basis;
- 4.1.3 within thirty (30) days of First Approval, and thereafter each calendar month not later than the 23<sup>rd</sup> of the month, a rolling 18 month forecast, broken down on a month-by-month and country-by-country basis, for the period commencing at the beginning of the following month; and
- 4.1.4 not later than 1 August in each year, a five (5) year forecast, broken down on an annual basis.

Except as otherwise provided herein, all forecasts made hereunder shall be made to assist Elan in planning its production and Acorda in planning marketing and sales, shall not be binding purchase orders, and shall be without prejudice to Acorda’s subsequent firm orders for the Product in accordance with the terms of this agreement. Each forecast provided by Acorda shall supersede any previous forecast and may be expressed in a reasonable range. After receiving Acorda’s forecasts, Elan shall notify Acorda within five (5) days if Elan becomes aware that it will be unable to supply Acorda’s forecasted requirements of Product and, in such event, the provisions of Clause 4.6 shall be applicable.

- 4.2. **Purchase Requirements**. Subject to the agreement between the Parties relating to Launch Stocks under Clause 4.7, Acorda shall be bound to order one hundred percent

(100%) of the forecasted quantities of the Product for each month of the first three (3) months of the most recent rolling forecast referred to in Clause 4.1.3, but otherwise forecasts shall not be binding.

- 4.3. Forecasts and orders shall not increase or decrease by more than 25% in the aggregate amount of Product required in a calendar quarter compared to the previous calendar quarter, except for Launch Stocks or unless otherwise agreed by Elan. However, Elan shall use reasonable efforts to fulfil Acorda's requirements in excess of duly forecasted and ordered amounts.
- 4.4. Forecasts and orders shall not exceed the Maximum Capacity during the applicable quarterly period.
- 4.5. **Firm Orders .** Acorda or its Designee shall provide Elan with purchase orders on the standard purchase order forms of Acorda or its Designee (without prejudice to Clause 5.4) of its Elan Minimum Requirements at least ninety (90) days before it requires each delivery of Product (subject to Clause 4.7 with respect to Launch Stocks), specifying the required delivery date in each purchase order and specifying the quantity of Product requested for commercial use and the quantity of Product for promotional and sample use.
- 4.6. **Shortages .** Elan agrees that it will use commercially reasonable efforts to prevent an interruption of supply to Acorda and shall immediately notify Acorda of any problems or unusual production situations which may adversely affect production or quality of Product or its Specifications or its timely delivery to Acorda or its designee. If, at any time during the term of this Agreement, Elan becomes aware that it will not be able to satisfy Acorda's forecasts or ordered requirements for Product, then Elan shall: (i) give Acorda prompt notice thereof, (ii) take all commercially reasonable steps to enable Acorda to procure adequate quantities of Product from the Second Source in accordance with the applicable provisions of Clause 7 and (iii) if such inability is partial, Elan shall fulfill firm orders with such quantities of Product as are available. and shall continue to use its commercially reasonable efforts to fulfill orders on a timely basis.
- 4.7. **Launch Stocks .** Within six months prior to an anticipated Regulatory Approval in a Major Market, the parties shall discuss and agree upon the manufacture and purchase of specific quantities of Launch Stocks for launch of the Product in the applicable Major Market.
  - 4.7.1 Launch Stocks shall be ordered not later than 20 Business Days from receipt by Acorda of an approval letter, from the FDA or equivalent Governmental Authority in respect of the NDA or an NDA Equivalent in another Major Market.
  - 4.7.2 Acorda may use the validation batches of the Product as Launch Stocks, subject to compliance with applicable laws, the Licence Agreement and other provisions of this Agreement, provided that in such event, any amounts previously paid by

Acorda to Elan for such validation batches shall be credited against the applicable price for Launch Stocks under Clause 9.1.

## **CLAUSE 5    SUPPLY OF THE PRODUCT**

- 5.1. Save as otherwise provided in this Agreement, Elan shall use commercially reasonable efforts to produce and supply to Acorda its entire Elan Minimum Requirements of the Product as set forth in and in response to firm purchase orders, within ninety (90) days of the purchase order, or one hundred and fifty (150) days for Launch Stocks or samples (subject to any required extension due to the lead times of specific components of samples).
- 5.2. Elan shall have no obligation to supply Product:
  - 5.2.1. For any period, in excess of Acorda's properly forecast requirements for such period (but Elan will nevertheless use its commercially reasonable efforts to fulfil Acorda's requirements in excess of such amounts, having regard to its manufacturing capacity);
  - 5.2.2. for less than a minimum order of one Batch, or such other minimum quantity as may be agreed in the Technical Agreement;
  - 5.2.3. in partial Batches;
  - 5.2.4. where Clause 2.3 applies; or
  - 5.2.5. pursuant to an order which does not conform in all material respects to the provisions of Clause 4 and this Clause 5; provided that if Elan does supply pursuant to such an order in its absolute discretion, that fulfilment shall not affect Elan's right to refuse to fulfil any subsequent order which does not comply in all material respects with those provisions.
- 5.3. The Product supplied by Elan to Acorda shall:
  - 5.3.1. be delivered in finished packaged form in the dosages and configurations as set forth in the Specifications and agreed by the parties and included in the NDA and any NDA Equivalent;
  - 5.3.2. be shipped EXW Elan's Facility;
  - 5.3.3. be delivered with a certificate of analysis and certificate of release in respect of the Product, in a form reasonably acceptable to Acorda (and Acorda shall be entitled to rely upon such certificate of analysis without the necessity of performing additional testing), in accordance with the terms of the Technical Agreement, cGMPs and the NDA or any NDA Equivalent; and

5.3.4 have a shelf life to be determined in the Technical Agreement.

5.4. The terms of this Agreement are hereby incorporated by reference into each order of Product submitted by Acorda and accepted by Elan. In the event of any conflict between an order or other written instructions and this Agreement, the terms of this Agreement shall prevail.

5.5. Not less than eighteen (18) months before the anticipated First Approval, or such later date as may be determined by the Committee, the parties shall negotiate in good faith to conclude a detailed technical agreement (the “**Technical Agreement**”) regulating the parties’ respective obligations from a technical and quality perspective for the supply of the Product by Elan to Acorda, subject in all cases to compliance with cGMPs, the requirements and commitments of the NDA and any NDA Equivalent and any other applicable laws or regulations governing manufacture and supply of Product. Such agreement will include commercially reasonable terms as to:

- 5.5.1 the precise procedures regulating the alleged failure of any shipment of the Product to conform to the Specifications as a result of an alleged latent defect and the procedures to be adopted for the return and replacement of such Product;
- 5.5.2 the inspection and testing for compliance with specifications of API to be conducted by Elan prior to incorporation into Product, the testing and quality analysis of Product to be conducted by Elan prior to shipment of the Product and the format of the certificate of analysis and certificate of release to be furnished by Elan to Acorda as well as any quality analysis to be conducted by Acorda or its Designee;
- 5.5.3 the batch manufacturing records and other documentation to be prepared and maintained by Elan and delivered with each shipment to Acorda to show compliance with cGMP as well as other applicable United States of America and foreign laws and regulations;
- 5.5.4 the agreed shelf life of the Product as of the date of shipment;
- 5.5.5 the quantity of Product constituting a Batch and minimum Batch size of each shipment of the Product;
- 5.5.6 the manner in which Elan may provide Acorda with assistance in relation to field alerts, recalls, complaints and adverse events;
- 5.5.7 the notification of change by both parties;
- 5.5.8 the responsibility to collate and write annual product review and annual reports;
- 5.5.9 technical agreements with any subcontracted parties;
- 5.5.10 the stability commitments in NDA or amendments thereto;

- 5.5.11 active drug substance, excipient and component supplier agreements, including audits/inspections of related manufacturing facilities;
- 5.5.12 procedures for determining and monitoring the marginal unit variable element of Manufacturing Cost for purposes of Clause 9.5.1;
- 5.5.13 such other matters relating to the manufacturing and supply of Product, including any amendments to any of the terms of this Agreement, any matters that this Agreement refers to be included in the Technical Agreement or any other matters that the Parties may mutually agree to or as may be required by the NDA or any NDA Equivalent.

## **CLAUSE 6 DISPUTES AS TO SPECIFICATION**

- 6.1. All claims for failure of any delivery of the Product to conform to the Specifications must be made by Acorda in writing within sixty (60) days following delivery of Product to Acorda or its Designee except in the case of latent defects. Acorda shall promptly upon Elan's request provide reasonable details of the alleged non-conformance and supporting evidence, and shall upon request permit Elan to re-test the Product. If Elan does not agree with Acorda's determination of non-conformance, then Elan shall provide Acorda with a written notice of such disagreement within twenty (20) days of receipt of the non-conformance notice (adjusted for any delay in providing appropriate details or permitting re-testing), responding to Acorda's claim. The Parties shall use commercially reasonable efforts to resolve such disagreement within ten (10) Business Days of Acorda's receipt of Elan's notice of disagreement.
- 6.2. Claims for latent defects, not discovered during the routine testing protocol (to be agreed in the Technical Agreement) shall be made in accordance with the Technical Agreement in writing within thirty (30) days of discovery. Failure to make timely claims in the manner to be prescribed in the Technical Agreement shall constitute acceptance of the delivery.
- 6.3. In the event that the Product supplied by Elan is not in compliance with the Specifications, or is otherwise adulterated, misbranded or defective, Elan shall, in addition to any other applicable remedies:
  - 6.3.1 be responsible, at the sole cost and expense of Elan, for re-analysis, sampling, processing, return, disposal or destruction, including certification of destruction, of such non-conforming Product; and
  - 6.3.2 at its cost, replace the nonconforming Product with Product meeting the Specifications as soon as reasonably practicable.
- 6.4. In the event that the nonconformity was due to a fault of Acorda, then, according to Elan's orders, the Product shall either be destroyed by Acorda, or returned to Elan for

destruction by Elan, at Acorda's expense. In such an event Acorda will not be entitled to any credit as to the non-conforming Product.

6.5. In the event of an unresolved dispute as to:

6.5.1 conformity of the Product with Specifications; or

6.5.2 whether defects in the Product are attributable to the negligent acts or omissions of Elan,

the parties shall within 30 days after expiration of the ten (10) Business Day period referred to in Clause 6.1 appoint an independent laboratory to undertake the relevant testing and its findings shall be conclusive and binding upon the parties.

All costs relating to this process shall be borne solely by the party whose testing was in error.

If the parties are unable to agree as to the independent laboratory to be used, the matter shall be referred to arbitration in accordance with Article 12.14 of the License Agreement.

## CLAUSE 7 SECOND SOURCE

7.1. Process Transfer to Second Source :

Acorda shall be entitled to qualify the facility of Patheon Inc. at 2100 Syntex Court, Mississauga, Ontario as a second source of the Product ("Second Source"), subject to Patheon, Inc. (the "Manufacturer") undertaking to Elan to protect the confidentiality of Elan's manufacturing processes related to Product and not use them for any other purpose, in terms reasonably satisfactory to Elan provided that Elan hereby acknowledges that the Manufacturer is in the process of being qualified as a Second Source Manufacturer.

At Acorda's request, Elan shall use commercially reasonable efforts to assist in qualifying the Second Source as an alternative site of manufacture of the Product. Pursuant to this obligation, Elan shall:

7.1.1 provide Acorda or the Manufacturer (at Acorda's request) with any information necessary to manufacture the Product;

7.1.2 provide to Acorda or the Manufacturer (at Acorda's request) the documentation constituting the required material support, more particularly practical performance advice, shop practice, specifications as to materials to be used and control methods;

7.1.3 assist Acorda and/or the Manufacturer (at Acorda's request) with the working up and use of the technology and with the training of Manufacturer's personnel to

the extent which may reasonably be necessary in relation to the manufacture of the Product by the Manufacturer. In this regard, Elan will receive the Acorda's and/or Manufacturer's scientific staff, as applicable, in its premises for certain periods, the term of which will be agreed by the parties; and

- 7.1.4 comply with the other obligations and responsibilities of Elan relating to technology transfer to Patheon, as set forth in the Technology Transfer Responsibilities Schedule.

Acorda shall comply with its obligations and responsibilities relating to technology transfer to Patheon, as set forth in the Technology Transfer Responsibilities Schedule.

7.2. Supply of Product from Second Source:

Acorda may purchase the following quantities of Product from the Second Source and, accordingly, if so purchased, Acorda shall have no obligation to purchase such quantities from Elan and Elan shall have no obligation to supply such quantities to Acorda:

- 7.2.1 In any Year, up to twenty five percent (25%) of Acorda's total requirements of Product for such Year, subject to Clauses 7.3.2 and 9.5 (the "**Second Source Quantity**");
- 7.2.2 quantities of the Product which Elan is not obligated to, and declines to, supply pursuant to Clause 2.3;
- 7.2.3 quantities of Product in addition to the Second Source Quantity required to make up any portion of a valid purchase order which is either (i) not delivered by Elan by its due date for delivery (regardless of the cause of late or short delivery), except for Minor Deficiencies, or (ii) by reason of Force Majeure, to the extent not capable of being delivered by its due date for delivery, for so long as the Force Majeure continues;
- 7.2.4 where there is a Serious Failure To Supply, its entire requirements of the Product, subject to Clause 7.6.

7.3. Notification of Supply from Second Source; Equitable Purchase of Samples :

- 7.3.1 If Acorda purchases Product from the Second Source, the amount of the same, together with the quantity so purchased as samples, shall be notified to Elan in the applicable Statement.
- 7.3.2 Acorda shall purchase from the Second Source at least the same proportion of samples of the Product to commercial supply of Product as the proportion of samples to commercial supply purchased by Acorda from Elan.

**7.4. No Supply Restrictions On Second Source :**

Acorda shall not place or attempt to place any restriction on supply from the Second Source to Elan or its licensees for sale in the Elan Territory, except to the extent of the restrictions on supply by Elan under Clause 2.2. In particular, Acorda shall not place or attempt to place any restriction on supplies from the Second Source to Elan for sale in the Elan Territory or its licensees after the end of the Term.

**7.5. Responsibility for Second Source :**

Assuming compliance by Elan with Clause 7.1, Acorda shall be solely responsible for:

- 7.5.1 all process and equipment validation in the Second Source required by applicable law or regulations and shall take all steps reasonably necessary to pass inspection by the Governmental Authority;
- 7.5.2 Product supplied to Acorda or its Designees by the Second Source.

**7.6. Resumption of Elan Supply :**

- 7.6.1 In the event that Product is being purchased from a Second Source as a result of Serious Failure To Supply, at such time as Elan has remedied the situation that caused it and is once again able to fulfil its obligations to supply Product pursuant to the terms and conditions of this Agreement, Elan shall so notify Acorda. Commencing on the first calendar quarter beginning after the date of such notice (the “**Resumption Quarter**”), Acorda shall resume purchasing and Elan shall resume its obligations to supply the Minimum Elan Quantities from Elan, subject to the provisions of Clause 7.6.2.
- 7.6.2 Acorda shall be entitled to:
  - 7.6.2.1 honor its binding purchase commitments from the Second Source, incurred reasonably and consistently with its practice of ordering from Elan and for delivery within three (3) months of the date of such commitments, prior to the notice referred to in Clause 7.6.1; and
  - 7.6.2.2 subsequent to the commencement of the Resumption Quarter, in addition to the Second Source Quantity, purchase from the Second Source up to twenty five percent (25%) of Minimum Elan Requirements, to the exclusion of Elan, for two consecutive calendar quarters in order to be satisfied of Elan’s ability to fulfil its obligations in respect of the supply of Product pursuant to the terms and conditions of this Agreement.
- 7.6.3 The Technical Agreement shall contain terms applicable to the resumption of supply where the cessation is by reason of Force Majeure, which shall be not less favourable to Elan than the provisions of Clauses 7.6.1 and 7.6.2 applicable to resumption following Serious Failure to Supply.

**7.7. No Termination Right :**

Absent Elan's failure to use commercially reasonable efforts to supply Product in accordance with the terms of this Agreement, Acorda shall have no right to terminate this Agreement by reason of failure to supply, except as otherwise expressly provided herein.

**7.8. Have Made License :**

The Parties acknowledge and confirm that:

- (a) to the extent that Acorda is permitted hereunder to purchase the Product from Patheon; and
- (b) following termination of this Agreement, and until termination of the License Agreement –

Acorda is regarded for the purposes of Article 2.1 of the License Agreement as being permitted to have the Product made by Patheon at the Second Source (subject always to the terms and conditions of this Agreement) and that the license grant under such Article 2.1 to make and have made Product extends accordingly.

**CLAUSE 8 ADVERSE EVENTS AND PRODUCT RECALL**

**8.1. Each party shall give the other prompt notice, which shall be promptly confirmed in writing, of any occurrence that involves:**

- 8.1.1 any material complaint about the safety or effectiveness of a Product, including a claim for death or injury following administration of such Product (that is plausibly related to the administration of such Product); and
- 8.1.2 any other matter arising out of this Agreement that must be reported to a Governmental Authority.

In the case of Acorda reporting to Elan matters described in Clause 8.1.2, reporting quarterly, or in such other timescale as may be agreed in the Technical Agreement, shall be considered “prompt”.

For the avoidance of doubt, Acorda shall have overall responsibility for adverse event reporting and medical complaints.

**8.2. If a party:**

- 8.2.1 is notified by a Governmental Authority that a Recall of a Product is required, requested or otherwise advisable as being probably needed; or
- 8.2.2 establishes a need to Recall a Product for non-conformities with the Specifications –

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission

it shall promptly give to the other party written notice of the same with full details.

- 8.3. Unless otherwise agreed, after consultation with Elan, Acorda shall take the lead role in any Recall, market withdrawal, stock recovery or any other corrective action related to Product in a commercially reasonable manner and Elan shall afford all reasonable assistance. A final report shall be completed by Acorda and delivered promptly to Elan.
- 8.4. If the Recall, market withdrawal, stock recovery or other corrective action relating to a Product arises from Elan's negligent acts or omissions in manufacturing the Product, or failure of the Product to conform to Specifications, the costs, including the cost of replacement quantities of Products, of such Recall, market withdrawal, stock recovery or other corrective action relating to a Product shall be borne by Elan provided that Acorda could not have discovered the said act(s) or omission(s) prior to the sale of the Product by exercising reasonable diligence. In all other circumstances, such costs shall be borne by Acorda. For purposes of this Agreement, such costs shall include the expenses of notification and destruction or return of the Recalled Product and all other documented out-of-pocket costs incurred in connection with such Recall, market withdrawal, stock recovery or other corrective action relating to a Product, but shall not include lost profits or opportunity costs of either Party.

In the event that Elan should bear the costs of any recall hereunder, Elan shall be entitled but not obliged to take over and perform the recall of the Product and Acorda shall provide Elan at no cost with all such reasonable assistance as may be required by Elan.

## CLAUSE 9 FINANCIAL PROVISIONS

### 9.1. Price of Launch Stocks :

Elan shall invoice Acorda for Launch Stocks at a price equivalent to Manufacturing Cost plus [\*\*], subject to reconciliation pursuant to Clause 9.3.3.

### 9.2. Price of Samples :

The price to be charged to Acorda for Product intended for distribution as free-of-charge promotional samples in its marketing and promotion of the Product shall be equivalent to Manufacturing Cost plus [\*\*\*] which price shall apply to Product supplied EXW Elan's Facility to Acorda. For the avoidance of doubt, the Parties confirm that if Acorda requires the samples to be supplied in sample packaging, Manufacturing Cost shall include all costs referable to such packaging.

### 9.3. Price of Product (General) :

- 9.3.1 Except for Product referred to in Clauses 9.1 and 9.2, the price of the Product manufactured by Elan to be charged to Acorda under this Agreement shall be equivalent to [\*\*\*] of the NSP as determined by the provisions of Clause 9.3.3 (the "**Supply Price**"), less the Discount to the extent applicable, and

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission

subject to Clause 2.5. The foregoing price shall apply to Product supplied EXW Elan's Facility packaged and labelled in final market form and consistent with the NDA.

- 9.3.2 For the avoidance of doubt the Parties agree that if for whatever reason the Product supplied by Elan to Acorda which meets the Specifications and the applicable law and regulatory requirements is not sold by Acorda, payment to Elan for such Product shall nonetheless be effected and the price of the Product shall be determined by reference to the NSP calculated pursuant to the provisions of Clause 9.3.3.
- 9.3.3 Upon supply, Elan shall render an invoice in respect of the quantities of Product delivered to Acorda for a sum calculated by reference to [\*\*\*] of then-applicable Notional NSP. The Parties shall adjust their account as of the end of each calendar quarter during such calendar year by Acorda paying to Elan, or by Elan crediting Acorda (as the case may be), the difference between the sum paid pursuant to the previous sentence and the actual Supply Price calculated each calendar quarter pursuant by reference to actual NSP in such quarter, within the period specified in Clause 9.6.

9.4. Discount :

Where Acorda purchases from Elan for delivery in any Year more than [\*\*\*] tablets of the Product, Acorda shall be entitled to a discount (the “**Discount**”) in respect of the excess equal to [\*\*\*] of Elan’s Manufacturing Cost for such excess tablets.

The Discount is without prejudice to Clause 2.3.

9.5. Compensating Payment :

- 9.5.1 In respect of all Product purchased from the Second Source pursuant to Clause 7.2.1 and **7.6.2.2**, Acorda shall make a compensating payment to Elan calculated per unit as X – Y, where “X” is the unit price that would have applied if the Product were purchased from Elan, under Clause 9.2 or 9.3 as applicable; and “Y” is the marginal unit variable element of Elan’s Manufacturing Cost applicable to such Product.
- 9.5.2 Such compensating payment shall be made in respect of a particular quarter at the time of provision of the Statement, based on the then Notional NSP and estimated Manufacturing Cost. The Parties shall adjust their account as of the end of each calendar year by Acorda paying to Elan, or by Elan crediting Acorda (as the case may be), the difference between the sum paid pursuant to Clause 9.5.1 and the actual payment calculated on the basis of actual applicable NSP and actual Manufacturing Cost calculated at the end of the calendar year, or such other period as may be specified in the Technical Agreement within sixty (60) days after the end of the calendar year.

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission

9.6. Time For Payment :

For the first two years following First Commercial Sale of the Product in any country of the Territory, payment for the Product supplied to Acorda shall be effected in \$ within sixty (60) days of the date of the relevant invoice issued on supply by Elan pursuant to Clause 9.3.3. Thereafter, payment shall be effected by Acorda in \$ within thirty (30) days of the date of the relevant invoice issued on supply by Elan pursuant to Clause 9.3.3.

The adjusting payments referred to in Clause 9.3.3 shall be made on provision of the relevant Statement.

For the avoidance of doubt, in respect of Product ordered for a particular country prior to Regulatory Approval in that country, Acorda shall be responsible for the price of such Product as from its readiness for delivery, notwithstanding that applicable law or regulations may prevent such Product from being supplied before Regulatory Approval.

9.7. Process Transfer Costs :

Except as otherwise set forth in this Agreement, in respect of the establishment, qualification and operation of the Second Source, Acorda shall be solely responsible for:

- 9.7.1 Acorda's own costs and expenses;
- 9.7.2 all third party costs and expenses, including out of pocket expenses incurred by Elan, for products or services previously approved by the Committee; and
- 9.7.3 work conducted by Elan, its Affiliates, and their employees and consultants, under the Technology Transfer Responsibilities schedule, or as may otherwise be agreed to by the Parties, at the rate of FTE plus [\*\*\*].

9.8. VAT :

All prices for the Product and other amounts in this Agreement are exclusive of any applicable value added or any other sales tax, for which Acorda will be additionally liable, if payable, subject to Clause 10.

## **CLAUSE 10 PAYMENTS, REPORTS AND AUDITS**

Article 5.9 of the Licence Agreement is hereby incorporated by reference herein as if restated in its entirety herein.

## **CLAUSE 11 DURATION AND TERMINATION**

- 11.1. This Agreement shall be deemed to have come into force on the Effective Date and will expire upon expiry or termination of the Licence Agreement, howsoever arising.

- 11.2. In addition to the rights of termination provided for elsewhere in this Agreement, either party will be entitled forthwith to terminate this Agreement by written notice to the other party if:
- 11.2.1 that other party commits any breach of any of the provisions of this Agreement or the Licence Agreement, and in the case of a breach capable of cure, fails to cure the same within 60 days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied; provided, that if the breaching party has proposed a course of action to cure the breach and is acting in good faith to cure same but has not cured the breach by the 60th day, such period shall be extended by such period as is reasonably necessary to permit the breach to be cured, provided that such period shall not be extended by more than 90 days, unless otherwise agreed in writing by the parties;
  - 11.2.2 that other party goes into liquidation (except for the purposes of amalgamation or reconstruction and in such manner that the company resulting therefrom effectively agrees to be bound by or assume the obligations imposed on that other party under this Agreement);
  - 11.2.3 an encumbrancer takes possession or a receiver is appointed over any of the property or assets of that other party;
  - 11.2.4 any proceedings are filed or commenced by that other party under bankruptcy, insolvency or debtor relief laws or anything analogous to any of the foregoing under the laws of any jurisdiction occurs in relation to that other party.
- 11.3. For the purposes of Clause 11.2, a breach will be considered capable of cure if the party in breach can comply with the provision in question in all respects other than as to the time of performance (provided that time of performance is not of the essence).
- 11.4. Elan may terminate this Agreement by giving twelve (12) months' written notice to do so to Acorda.

## **CLAUSE 12 CONSEQUENCES OF TERMINATION**

- 12.1. Upon exercise of those rights of termination specified in Clause 11 or elsewhere in this Agreement, this Agreement shall, subject to the provisions of the Agreement which survive the termination of the Agreement and Clause 12.2 automatically terminate forthwith and be of no further legal force or effect, provided, however, that if the Agreement is terminated by Elan under Clause 11.4 such termination shall not be effective until the expiration of such twelve (12) month period
- 12.2. Upon termination of this Agreement by either party, the following shall be the consequences:

- 12.2.1 any sums that were due from Acorda to Elan under the provisions of Clause 9 or otherwise prior to the exercise of the right to terminate this Agreement as set forth herein shall be paid in full forthwith provided, that Elan has delivered Product in accordance with the Specifications and cGMP; and Elan shall not be liable to repay to Acorda any amount of money paid or payable by Acorda to Elan up to the date of the termination of this Agreement;
- 12.2.2 all confidentiality provisions set out herein shall remain in full force and effect for a period of 7 years from the date of termination of this Agreement;
- 12.2.3 all representations and warranties shall insofar as appropriate remain in full force and effect;
- 12.2.4 the rights of inspection and audit shall continue in force for the period referred to in the relevant provisions of this Agreement; and
- 12.2.5 if Elan terminates the Agreement under Clause 11.4, Acorda shall be entitled to purchase all of Acorda's requirements of Product from the Second Source as from termination becoming effective.

### **CLAUSE 13 REPRESENTATIONS AND WARRANTIES; INDEMNIFICATION**

- 13.1. The following clauses of the License Agreement are hereby incorporated by reference herein as if stated herein in their entirety, except that for purposes of this Agreement, all references in such clauses to "the Agreement" or "this Agreement" shall be deemed to mean this Supply Agreement: Articles 8.2, 8.3, 8.4, 8.5, and 8.7.
- 13.2. Elan represents and warrants that the Product supplied to Acorda by Elan under this Agreement shall be free of any lien, security, interest or other encumbrance on title, conform to the Specifications and all applicable laws and regulations and requirements of the FDA and other Governmental Authorities including, without limitation, the cGMP regulations which apply to the manufacture, storage, packaging and supply of the Product. Elan represents and warrants that the Product supplied to Acorda under this Agreement shall be free of defects in material and workmanship, shall not be adulterated or mis-branded as defined by the Act (or applicable foreign law) and shall not be a product which would violate any section of such Act if introduced in interstate commerce and shall be fit for use as a pharmaceutical product. Acorda agrees not to assert its right to rescind this Agreement in the event of a breach of the representations of Elan contained in this Clause 13.2.
- 13.3. Elan shall indemnify, defend and hold harmless Acorda and its officers, directors, employees and agents from all actions, losses, claims, demands, damages, costs and liabilities (including reasonable attorneys' fees) due to Third Party claims to which Acorda is or may become subject insofar as they arise out of or are alleged or claimed to arise out of (i) any breach by Elan of any of its obligations under this Agreement, (ii) any breach of a representation or warranty of Elan made in this Agreement, (iii) any failure of

the Product provided under this Agreement to meet the Specifications, or (iv) the manufacture or shipment of the Product provided under this Agreement by Elan, except in each case to the extent due to the negligence or wilful misconduct of Acorda.

13.4. Acorda shall indemnify, defend and hold harmless Elan and its officers, directors, employees and agents from all actions, losses, claims, demands, damages, costs and liabilities (including reasonable attorneys' fees) due to Third Party claims to which Elan is or may become subject insofar as they arise out of or are alleged or claimed to arise out of (i) any breach by Acorda of any of its obligations under this Agreement, (ii) any breach of any representation or warranty of Acorda made in this Agreement, (iii) damages for personal injury (including death) and/or for costs of medical treatment, caused by or attributed to the Product, or (iv) the acts or omissions of any sub-licensee appointed pursuant to the Licence Agreement, except in each case to the extent due to the negligence or wilful misconduct of Elan or to the relative extent that Elan is obliged to indemnify Acorda pursuant to Clause 13.3.

13.5. The party seeking an indemnity shall:

- 13.5.1 fully and promptly notify the other party of any claim or proceedings, or threatened claim or proceedings;
- 13.5.2 permit the indemnifying party to take full control of such claim or proceedings, with counsel of the indemnifying party's choice, provided that the indemnifying party shall reasonably and regularly consult with the indemnified party in relation to the progress and status of such claim or proceedings;
- 13.5.3 co-operate in the investigation and defence of such claim or proceedings; and
- 13.5.4 take all reasonable steps to mitigate any loss or liability in respect of any such claim or proceedings.

The indemnifying party may settle a Claim on terms which provide only for monetary relief and do not include any admission of liability. Save as aforesaid, neither the indemnifying party nor the party to be indemnified shall acknowledge the validity of, compromise or otherwise settle any Claim or proceedings without the prior written consent of the other, which shall not be unreasonably withheld.

13.6. TO THE FULLEST EXTENT PERMITTED BY LAW, APART FROM THE FOREGOING REPRESENTATIONS, WARRANTIES, COVENANTS AND INDEMNITIES, AND THOSE SET FORTH IN THE LICENSE AGREEMENT ELAN MAKES NO ADDITIONAL REPRESENTATIONS OR WARRANTIES AND HEREBY DISCLAIMS ALL WARRANTIES, REPRESENTATIONS, AND LIABILITIES, WHETHER EXPRESS OR IMPLIED, ARISING FROM CONTRACT OR TORT (EXCEPT FRAUD), IMPOSED BY STATUTE OR OTHERWISE, RELATING TO THE PRODUCTS AND/OR ANY PATENTS OR TECHNOLOGY USED OR INCLUDED IN THE PRODUCTS, INCLUDING ANY WARRANTIES AS

TO MERCHANTABILITY, FITNESS FOR PURPOSE, CORRESPONDENCE WITH DESCRIPTION, OR NON-INFRINGEMENT.

- 13.7. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, ELAN AND ACORDA SHALL NOT BE LIABLE TO THE OTHER BY REASON OF ANY REPRESENTATION OR WARRANTY, CONDITION OR OTHER TERM OR ANY DUTY OF COMMON LAW, OR UNDER THE EXPRESS TERMS OF THIS AGREEMENT, FOR ANY CONSEQUENTIAL, SPECIAL OR INCIDENTAL OR PUNITIVE LOSS OR DAMAGE (WHETHER FOR LOSS OF CURRENT OR FUTURE PROFITS, LOSS OF ENTERPRISE VALUE OR OTHERWISE) AND WHETHER OCCASIONED BY THE NEGLIGENCE OF THE RESPECTIVE PARTIES, THEIR EMPLOYEES OR AGENTS OR OTHERWISE.
- 13.8. Elan and Acorda shall each maintain comprehensive general liability insurance, insuring against all liability, including product liability, personal injury, physical injury and property damage in respective amounts deemed reasonable in the industry for companies of their respective size and engaged in their respective activities under this Agreement for the duration of this Agreement and for a period of 5 years thereafter.

Each party shall provide the other party with a certificate from the insurance company verifying the above and shall notify the other party in writing at least 30 days prior to the expiration or termination of such coverage.

#### **CLAUSE 14 MISCELLANEOUS PROVISIONS**

- 14.1. Secrecy and Confidentiality. Article 12.1 of the License Agreement is hereby incorporated by reference herein as if stated herein in its entirety.

- 14.2. Licence to Elan:

Acorda hereby grants to Elan and Elan hereby accepts for the Term a non-exclusive royalty-free license to use such Acorda Patent Rights and Acorda Know-How as are necessary or useful for the purpose of manufacturing the Product. Such rights shall be sub-licensable by Elan to its Affiliates and sub-contractors, for the sole purpose of manufacturing the Product in accordance with this Agreement.

- 14.3. Assignment:

14.3.1 Subject to the provisions of this Clause 14.3, each party be entitled without the consent of the other:

- 14.3.1.1 to subcontract or delegate the whole or any part of its duties hereunder to its Affiliate(s) (but shall remain responsible for its obligations under this Agreement); and/or

- 14.3.1.2 to assign this Agreement to its Affiliate, provided that such assignment has no material adverse tax implications for the other Party or Parties hereto, and provided further that the assigning Party shall remain liable and responsible with such assignee to the other Party for the performance of any obligations, representations or warranties delegated, contracted, assigned or otherwise transferred to any such assignee.
- 14.3.2 In the event that Elan agrees to sell all or substantially all of the assets of Elan's Facility, Elan shall so notify Acorda. In such event, Elan may (a) terminate this Agreement by ninety (90) days' written notice to Acorda; or (b) assign all (but not, subject to the following sentences, a portion) of its rights and obligations under this Agreement to a Permitted Elan Assignee, provided that such transfer or assignment has no adverse tax implications for Acorda.
- 14.3.3 Each Party may assign all (but not a portion) of its rights and obligations under this Agreement to an entity that acquires all or substantially all of its business or assets to which this Agreement pertains, whether by merger, reorganisation, acquisition, sale or otherwise, provided, that in the case of an assignment by Elan, the assignee is a Permitted Elan Assignee.
- 14.3.4 Except as provided for in this Clause 14.3, this Agreement may not be assigned by a party without the prior written consent of the other Party, which shall not be unreasonably withheld or delayed.
- 14.3.5 Any permitted assignee of a Party under this Clause 14.3 shall assume all related obligations of its assignor under this Agreement.

14.4. Parties bound :

This Agreement shall be binding upon and enure for the benefit of parties hereto, their successors and permitted assigns.

14.5. Severability :

If any provision in this Agreement is deemed to be, or becomes invalid, illegal, void or unenforceable under applicable laws:

- 14.5.1 such provision will be deemed amended to conform to applicable laws so as to be valid and enforceable; or
- 14.5.2 if it cannot be so amended without materially altering the intention of the parties, it will be deleted the validity, legality and enforceability of the remaining provisions of this Agreement shall not be impaired or affected in any way.

14.6. Force Majeure :

- 14.6.1 Neither party to this Agreement shall be liable for delay or failure in the performance of any of its obligations hereunder if such delay or failure results from Force Majeure.
- 14.6.2 If Force Majeure prevents or delays the performance by a party of any obligation under this Agreement, then the party claiming Force Majeure shall promptly notify the other party thereof in writing. The parties shall thereafter as soon as practicable discuss how best to continue their operations in accordance with this Agreement and shall thereafter continue such discussions on a regular basis while Force Majeure continues.
- 14.6.3 Where a party claims Force Majeure, the other party's obligations under this Agreement shall be suspended for the period while Force Majeure continues, but only to the extent reasonably required by the Force Majeure.
- 14.6.4 The party claiming Force Majeure shall use all reasonable efforts to avoid, minimise or remove the cause of such non-performance and to mitigate its effects and shall continue performance with due dispatch whenever such causes are removed.
- 14.6.5 Where Force Majeure continues for a period of six (6) months the other party shall have the right to terminate this Agreement, provided that it has complied with its obligations under this Clause 14.6.

14.7. Relationship of the parties :

- 14.7.1 Nothing contained in this Agreement is intended or is to be construed to constitute any of the parties hereto as partners or members of a joint venture or any party as an employee of another party.
- 14.7.2 No party hereto shall have any express or implied right or authority to assume or create any obligations on behalf of or in the name of any other party or to bind another party to any contract, agreement or undertaking with any third party.

14.8. Amendments :

No amendment, modification or addition hereto shall be effective or binding on any party hereto unless set forth in writing and executed by a duly authorised representative of all parties hereto.

14.9. Waiver :

No waiver of any right under this Agreement shall be deemed effective unless contained in a written document signed by the party charged with such waiver, and no waiver of any breach or failure to perform shall be deemed to be a waiver of any future breach or failure to perform or of any other right arising under this Agreement.

14.10. Entire Agreement :

- 14.10.1 Each of the parties hereto hereby acknowledges that in entering into this Agreement it has not relied on any representation or warranty except as expressly set forth herein or in the License Agreement or in any other document referred to herein.
- 14.10.2 This Agreement and the Licence Agreement, together with the exhibits and schedules hereto and thereto, together set forth all of the agreements and understandings between the parties with respect to the subject matter hereof, and supersede and terminate all prior agreements and understandings between the parties with respect to the subject matter hereof, including the SCI Agreement and the MS Agreement.
- 14.10.3 Nothing in this Clause 14.10 shall exclude any liability which any party would otherwise have to the other party or any right which either of them may have to rescind this Agreement for fraud.

14.11. Governing law and jurisdiction :

- 14.11.1 This Agreement shall be governed by and construed in accordance with the laws of the State of New York , excluding its conflict of laws rules.
- 14.11.2 Article 12.14 of the License Agreement is hereby incorporated by reference herein as if stated herein in its entirety.

14.12. Notices :

- 14.12.1 Any notice to be given under this Agreement shall be sent in writing in English by registered or recorded delivery post, reputable overnight courier or fax to:

Elan at

c/o Elan Pharma Ltd.  
Monksland  
Athlone  
Co. Westmeath  
Ireland  
Attention: General Manager  
Fax: +353 906 492427

Acorda at

15 Skyline Drive  
Hawthorne, New York 10532  
United States of America  
Attention: President  
Fax: **914.347.4560**

or to such other address(es) and fax numbers as may from time to time be notified by either party to the other hereunder.

14.12.2 Any notice sent by mail shall be deemed to have been delivered within 7 working days after despatch or delivery to the relevant courier and any notice sent by fax shall be deemed to have been delivered upon confirmation of receipt. Notice of change of address shall be effective upon receipt.

14.13. Further assurances :

At the request of any of the parties, the other party or parties shall (and shall use reasonable efforts to procure that any other necessary third parties shall) execute and do all such documents, acts and things as may reasonably be required subsequent to the signing of this Agreement for assuring to or vesting in the requesting party the full benefit of the terms hereof.

14.14. Counterparts :

This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute this Agreement.

14.15. Set-off :

Each of the parties will be entitled but not obliged to set-off against any amount of money payable to it by the other party hereunder, any amount of money payable by it to the other party hereunder.

**IN WITNESS WHEREOF** the parties have executed this Agreement on the day and date appearing at the top of page 1.

## **SCHEDULE 1 MANUFACTURING COST**

“Manufacturing Cost” shall mean fully absorbed cost of manufacture (including packaging) which shall be determined on the basis of the following elements:

- (a) Direct material, labour and overhead cost; and
- (b) Such indirect labour, factory, laboratory and other overhead costs properly allocable. Overhead allocations shall include, but not be limited to, expenses of plant maintenance and engineering, plant management, receiving and warehousing, disposal and treatment of waste, building occupancy, quality control, costs of services provided to manufacturing and insurance provided to manufacturing.

Such allocations shall be in a manner consistent with GAAP from time to time and in a manner consistent with expenses and overhead allocated to other products manufactured by Elan or its Affiliates.

Where some part(s) of the manufacture or packaging is/are conducted by unaffiliated third party(ies), Manufacturing Cost shall be the amount paid to such third party(ies) plus any of the aforementioned costs incurred by Elan or its Affiliates in completing the manufacture, packaging or delivery of the Product.

**SIGNED**

Monksland Holdings BV

By: /s/ Pieter Bosse

By: /s/ Klaas van Blanken

for and on behalf of  
**ELAN CORPORATION, PLC.**

Name: Monksland Holdings BV

Title: Proxyholder

**SIGNED**

By: /s/ Ron Cohen

for and on behalf of  
**ACORDA THERAPEUTICS, INC.**

Name: Ron Cohen

Title: President & Chief Executive Officer

**LICENSE AGREEMENT**

by and between

**RUSH-PRESBYTERIAN-ST. LUKE'S MEDICAL CENTER**

and

**ACORDA THERAPEUTICS, INC.**

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality.  
Such omitted portions, which are marked with brackets [ ] and an asterisk \*, have been separately filed with the Commission.

THIS LICENSE AGREEMENT effective as of September 26, 2003 ("Effective Date"), by and between **RUSH-PRESBYTERIAN-ST. LUKE'S MEDICAL CENTER**, an Illinois not-for-profit corporation and having its principal office at 1725 W. Harrison St. Chicago, Ill. 60612 ("RUSH") and **ACORDA THERAPEUTICS, INC.**, a corporation organized and existing under the laws of the State of Delaware and having its principal office at 15 Skyline Drive, Hawthorne, New York 10532 ("ACORDA").

**W I T N E S S E T H:**

WHEREAS, RUSH has conducted investigations of the compound known as 4-aminopyridine for treatment of the symptoms of multiple sclerosis and has accordingly developed know-how in relation thereto;

WHEREAS, RUSH has received a notice of designation (the "Rush Orphan Designation") from the FDA stating that the Licensed Product (as defined herein) "qualifies for orphan designation for the relief of symptoms of multiple sclerosis;"

WHEREAS, RUSH's right and title to the Rush Orphan Designation for the Licensed Product has been assigned to ACORDA and RUSH has consented to such assignment;

WHEREAS, RUSH has the right to grant licenses in respect of the RUSH Know-How (as defined herein) and has granted no licenses thereto except (i) the option agreement, dated September 7, 1990 (the "Option Agreement"), between RUSH and Elan Pharmaceutical Research Corp. ("EPRC"), a predecessor corporation of Elan Drug Delivery Inc., a wholly-owned subsidiary of Elan Corporation plc ("ELAN") and (ii) the license agreement dated November 13, 1990 (the "Rush/Elan License"), between RUSH and EPRC, (the Option Agreement and the Rush/Elan License being collectively referred to herein as the "Rush/Elan Agreements");

WHEREAS, pursuant to the Side Agreement, as defined below, RUSH and ELAN and EPRC have, among other things terminated the Rush/Elan Agreements as of the Effective Date;

WHEREAS, ACORDA desires to obtain exclusive license rights, with a right to grant sublicenses, under and to the RUSH Know-How (as defined herein), and RUSH desires to grant such license to ACORDA, upon the terms and conditions set forth herein; and

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the Parties hereby agree as follows:

## ARTICLE I DEFINITIONS

Unless specifically set forth to the contrary herein, the following terms, where used in the singular or plural, shall have the respective meanings set forth below:

- 1.1.     “Act” shall mean the Federal Food Drug and Cosmetic Act of 1934, and the rules and regulations promulgated thereunder, or any successor act, as the same shall be in effect from time to time.
- 1.2.     “Affiliate” shall mean (i) any corporation or business entity of which more than fifty percent (50%) of the securities or other ownership interests representing the equity, the voting stock or general partnership interest are owned, controlled or held, directly or indirectly, by a Party; (ii) any corporation or business entity which, directly or indirectly, owns, controls or holds more than fifty percent (50%) (or the maximum ownership interest permitted by law) of the securities or other ownership interests representing the equity, voting stock or general partnership interest of a Party or (iii) any corporation or business entity of which a Party has the right to acquire, directly or indirectly, at least fifty percent (50%) of the securities or other ownership interests representing the equity, voting stock or general partnership interest thereof.
- 1.3.     “Base Royalty Term” shall mean, in any country in the Territory, the period beginning with the date of the First Commercial Sale in such country and continuing until the earlier of (i) expiration of the last to expire Elan Patent in such country; or (ii) ten (10) years from the date of First Commercial Sale in such country; provided however, that, in the event that ACORDA receives Regulatory Approval in the United States for Licensed Product with an Orphan Designation for the treatment of multiple sclerosis, then the Base Royalty Term in the United States shall not be less than seven years from the date of First Commercial Sale in the United States. In the event that RUSH’s further development of the RUSH Know-How results in the issuance to RUSH of a patent in any country or additional Orphan Drug Designation following the effective date of this Agreement that provides for a greater period of market exclusivity of the Product in such country, the Base Royalty Term in such country will continue for that period of market exclusivity provided by such patent or Orphan Drug Designation.
- 1.4.     “Business Day(s)” shall mean any day that is not a Saturday or a Sunday or a day on which the New York Stock Exchange is closed.
- 1.5.     “Calendar Quarter” shall mean the respective periods of three (3) consecutive calendar months ending on March 31, June 30, September 30 and December 31.
- 1.6.     “Calendar Year” shall mean each successive period of twelve (12) months commencing on January 1 and ending on December 31.
- 1.7.     “Compound” shall mean the chemical compound known as 4-aminopyridine, as diagrammed on Schedule 1.7 hereto.
- 1.8.     “CFR” shall mean the United States Code of Federal Regulations.
- 1.9.     “Effective Date” shall mean the date first above written.

- 1.10. “Elan/Acorda License” shall mean the Amended and Restated License Agreement effective as the Effective Date by and between ACORDA and ELAN.
- 1.11. “Elan Patent” shall mean any patent included in the Elan Patent Rights as set forth on Schedule 1.11 hereto
- 1.12. “End of Phase 2 Meeting” shall mean the first end of Phase 2 meeting with the FDA, as defined in 21 CFR Section 312.47, intended to determine the safety of proceeding to a Phase 3 Clinical Trial, evaluate the Phase 3 plan and protocols and identify any additional information necessary to support the NDA.
- 1.13. “FDA” shall mean the United States Food and Drug Administration and any successor agency having substantially the same functions.
- 1.14. “First Commercial Sale” shall mean the first commercial sale of Product by ACORDA, its Affiliate or its sublicensees in a country, for end use or consumption, after all required Regulatory Approvals have been granted by the governing health authority of such country. Sales for test marketing, clinical trial purposes, research and development, or compassionate or similar use where Acorda does not receive revenue from the sale other than cost recovery, shall not be deemed to constitute a commercial sale.
- 1.15. “GAAP” shall mean generally accepted accounting principles in the United States, consistently applied.
- 1.16. “Improvement” shall mean any and all improvements and enhancements, patentable or otherwise, related to the Compound or Product including, without limitation, in the manufacture, formulation, ingredients, preparation, presentation, means of delivery or administration, dosage, indication, use or packaging of Compound or Product.
- 1.17. “Licensed Product” shall mean any Product that utilizes or exploits the RUSH Know-How in the treatment of multiple sclerosis.
- 1.18. “NDA” shall mean a new drug application as defined in the Act and applicable regulations promulgated thereunder that is filed with the FDA to obtain Regulatory Approval of Licensed Product in the United States.
- 1.19. “Neurological Indications” shall mean indications concerning disorders and conditions of the neuromuscular system, central, peripheral and autonomic nervous systems, the neuromuscular junction and/or muscle. Such indications shall include, but not be limited to, multiple sclerosis and spinal cord injury.
- 1.20. “Net Sales” shall mean the gross amount invoiced for commercial sales of Product in the Territory by ACORDA or its Affiliates to Third Parties commencing upon the date of First Commercial Sale in any country in the Territory, after deducting the following:

(i) trade, cash and quantity discounts;

- (ii) credits and allowances on account of returned or rejected Product, including allowance for breakage or spoilage, recalls or Product destruction (whether voluntarily made or requested or made by a Regulatory Authority)
- (iii) chargebacks, rebates or similar payments granted to customers, including, but not limited to, managed health care organizations, wholesalers, distributors, buying groups, retailers, health care insurance carriers, pharmacy benefit management companies, health maintenance organizations or other institutions or health care organizations or to federal, state/provincial, local and other governments, their agencies and purchasers and reimbursers;
- (iv) sales or excise taxes, VAT or other taxes, and transportation, freight, postage, shipping and insurance charges and additional special transportation, custom duties, and other governmental charges;
- (v) retroactive price reductions; and
- (vi) write-offs or allowances for bad debts, to the extent permitted by GAAP.

Sales or other transfers between ACORDA and its Affiliates shall be excluded from the computation of Net Sales and no payments will be payable on such sales or transfers except where such Affiliates are end users, but Net Sales shall include the subsequent sales to Third Parties by such Affiliates.

- 1.21. “Orphan Designation” shall mean the designation of a drug as a drug for a rare disease or condition pursuant to Section 526 of the Act.
- 1.22. “Party” shall mean RUSH or ACORDA.
- 1.23. “Phase 3 Clinical Trial” shall mean a clinical trial in patients with multiple sclerosis conducted after an End of Phase 2 Meeting and conducted on a sufficient number of patients that is designed to establish that Licensed Product is safe and efficacious for its intended use, and to define warnings, precautions and adverse reactions that are associated with Licensed Product in the dosage range to be prescribed, and supporting Regulatory Approval of Licensed Product in the treatment of multiple sclerosis.
- 1.24. “Product” shall mean any finished pharmaceutical formulation for prescription use for the treatment of any human Neurological Indications which contains Compound as the therapeutically active ingredient.
- 1.25. “Proprietary Information” shall mean any and all scientific, clinical, regulatory, marketing, financial and commercial information or data, whether communicated in writing, orally or by any other means, which is owned and under the protection of one

Party and is being provided by that Party to the other Party in connection with this Agreement.

- 1.26. “Reduced Royalty Term” shall mean, in any country in the Territory, the period of time beginning with the date following the expiration of the Base Royalty Term in such country and continuing until the fifteenth anniversary of the Effective Date.
- 1.27. “Regulatory Authority” shall mean the FDA in the U.S., the EMEA or any agency in the European Union and any health regulatory authority(ies) in any country(ies) in the Territory that holds responsibility for granting Regulatory Approval for a Product in such country(ies), and any successor(s) agency thereto having substantially the same functions.
- 1.28. “Regulatory Approval” shall mean all approvals (including pricing and reimbursement approvals required for marketing authorization), product and/or establishment licenses, registrations or authorizations of all regional, federal, state or local regulatory agencies, departments, bureaus or other governmental entities, necessary for the manufacture, use, storage, import, export, transport and sale of Product in a regulatory jurisdiction.
- 1.29. “Royalty Year” shall mean, (i) for the year in which the First Commercial Sale occurs (the “First Royalty Year”), the period commencing with the first day of the Calendar Quarter in which the First Commercial Sale occurs and expiring on the last day of the Calendar Year in which the First Commercial Sale occurs; and (ii) for each subsequent year commencing after the end of the First Royalty Year, each successive Calendar Year.
- 1.30. “RUSH Know-How” shall mean all information and materials, including but not limited to, discoveries, information, Improvements, processes, formulas, data, inventions, know-how and trade secrets, patentable or otherwise, which as of the Effective Date or at any time during the term of this Agreement:
  - (a) relate to Compound or Product; and
  - (b) were developed by or on behalf of RUSH, are owned by RUSH or are in RUSH’s possession or control.Such know-how shall include, without limitation, all chemical, pharmaceutical, toxicological, preclinical, clinical, assay control, regulatory submissions, designations and approvals, and any other information used or useful for the development, manufacturing and/or regulatory approval of Compound or Product, including such rights which RUSH may have to information developed by Third Parties.
- 1.31. “Side Agreement” shall mean the Side Agreement by and among RUSH, ACORDA and ELAN executed as of the Effective Date, a copy of which is attached hereto as Exhibit 1.31.
- 1.32. “Territory” shall mean all of the countries in the world.
- 1.33. “Third Party(ies)” shall mean a person or entity who or which is neither a Party nor an Affiliate of a Party.

## **ARTICLE II** **LICENSE; SUBLICENSES**

**2.1. License Grant.** RUSH hereby grants to ACORDA an exclusive (even as to RUSH) license, including the right to grant sublicenses, under the RUSH Know-How, to develop, make, have made, use, import, offer for sale, market, commercialize, distribute and sell and otherwise dispose of Product in the Territory and to use and practice the RUSH Know-How. Notwithstanding the foregoing grant, Rush is expressly permitted to use its 4-AP know how for internal development and research efforts; provided, however, that (i) such use is for non-commercial academic purposes only, and (ii) that RUSH shall promptly notify ACORDA of any intellectual property, discovery or invention, once conceived and/or reduced to practice by RUSH in the course of conducting or performing such non-commercial activity, which shall be deemed RUSH Know-How for purposes of this Agreement.

**2.2. Improvements by ACORDA.** All rights and title to and interest in any Improvement developed or discovered by ACORDA in connection with the license granted under Section 2.1 above or ACORDA's activities hereunder shall be vested solely in ACORDA. Notwithstanding the provisions of 2.2, Acorda will continue to have royalty obligations set forth in Article V, to the extent applicable, with respect to any Product that contains an Improvement and which includes the Compound as the primary therapeutically active ingredient.

**2.3. Sublicenses.** ACORDA shall have the right to grant sublicenses of the licenses granted to it under Section 2.1 of this Agreement to Affiliates or any Third Party. ACORDA shall provide written notice to RUSH of any such sublicenses.

## **ARTICLE III** **DEVELOPMENT AND COMMERCIALIZATION**

**3.1. Exchange of Information.** Following execution of this Agreement, RUSH shall utilize good faith reasonable efforts to disclose to ACORDA in English and in writing, all Rush Know-How not previously available or made available to ACORDA, in electronic format, where available, and hard copies (or, upon ACORDA's request, originals), with the intention to make such information available to ACORDA as soon as reasonably practicable. Throughout the term of this Agreement, and in addition to the other communications required under this Agreement, RUSH shall also promptly disclose to ACORDA in English and in writing on an ongoing basis all Rush Know-How, and any and all additions or revisions thereto. To the extent not previously assigned to ACORDA, RUSH hereby conveys, assigns and transfers to ACORDA, free and clear of all claims, liens and encumbrances and contractually imposed restrictions, all right, title and interest in and to the Rush Orphan Designation. RUSH shall assist and cooperate with ACORDA in the submission of any letters or other documents to the FDA required or requested in connection with the change in ownership of the Rush Orphan Designation from RUSH to ACORDA. RUSH shall notify ACORDA promptly of any request for, or

any expression of interest in using, Compound for research or any other purpose and shall refer any such requests or expressions of interest directly to ACORDA. RUSH shall also promptly notify ACORDA of any intellectual property, discovery or invention, once conceived and/or reduced to practice by RUSH or any employee or agent of RUSH, in the course of conducting or performing any activity relating to Compound or Product.

3.2. **Development and Commercialization**. ACORDA shall use commercially reasonable efforts to develop and commercialize Licensed Product. As used herein, “commercially reasonable efforts” shall mean efforts and resources normally used by ACORDA for a product owned by it or to which it has exclusive rights, which is of similar market potential at a similar stage in its development or product life, taking into account issues of safety and efficacy, product profile, the competitiveness of the marketplace, the proprietary position of the compound or product, the regulatory and reimbursement structure involved, the profitability of the applicable products, and other relevant factors. ACORDA shall provide RUSH with an annual written report summarizing the status of ACORDA’S clinical development and regulatory activities with respect to Licensed Product, with the delivery to RUSH of the summary of the annual report to an IND submitted by ACORDA to the FDA in connection with the periodic reporting requirements of the IND to be in satisfaction of the foregoing requirement. The obligations set forth in this Section 3.2 are expressly conditioned upon the absence of any serious adverse conditions or event relating to the safety or efficacy of Compound or Product including the absence of any action by any regulatory authority limiting the development or commercialization of Compound or Product.

3.3. **Regulatory Matters**.

(a) ACORDA shall own, control and retain primary legal responsibility for the preparation, filing and prosecution of all filings and regulatory applications required to obtain Regulatory Approvals. ACORDA shall notify RUSH upon the receipt of Regulatory Approvals and of the date of First Commercial Sale.

(b) Upon ACORDA’S request, RUSH shall consult and cooperate with ACORDA in connection with obtaining Regulatory Approval of Product.

3.4. **Trademark**. ACORDA shall select, own and maintain trademarks for Product in the Territory.

#### **ARTICLE IV** **CONFIDENTIALITY AND PUBLICITY**

4.1. **Non-Disclosure and Non-Use Obligations**. All Proprietary Information disclosed by one Party to the other Party hereunder shall be maintained in confidence and shall not be disclosed to any Third Party or used for any purpose except as expressly permitted herein without the prior written consent of the Party that disclosed the Proprietary Information to the other Party during the term of this Agreement. The foregoing non-disclosure and non-use obligations shall not apply to the extent that such Proprietary Information:

- (a) is known by the receiving Party at the time of its receipt, and not through a prior disclosure by the disclosing Party, as documented by business records;
- (b) is or becomes properly in the public domain or knowledge;
- (c) is subsequently disclosed to a receiving Party by a Third Party who may lawfully do so and is not under an obligation of confidentiality to the disclosing Party; or
- (d) is developed by the receiving Party independently of Proprietary Information received from the other Party, as documented by research and development records.

4.2. Permitted Disclosure of Proprietary Information. Notwithstanding Section 4.1, a Party receiving Proprietary Information of another Party may disclose such Proprietary Information:

- (a) by ACORDA to governmental or other regulatory agencies in order to obtain patents or to gain approval to conduct clinical trials or to market Product;
- (b) by ACORDA or its agents, consultants, Affiliates, sublicensees and/or other Third Parties for the research and development, manufacturing and/or marketing of the Compound and/or Product (or for such parties to determine their interests in performing such activities) on the condition that such Third Parties agree to be bound by the confidentiality obligations consistent with this Agreement; or
- (c) if required to be disclosed by law or court order, provided that notice is promptly delivered to the non-disclosing Party in order to provide an opportunity to challenge or limit the disclosure obligations; provided, however, without limiting any of the foregoing, it is understood that ACORDA or its Affiliates may make disclosure of this Agreement and the terms hereof in any filings required by the Securities and Exchange Commission (“SEC”) or any other governmental agency, may file this Agreement as an exhibit to any filing with the SEC or such agency and may distribute any such filing in the ordinary course of its business.

4.3. Publication Neither RUSH nor any Affiliate or employee of or consultant to RUSH shall make any publication relating to Compound or Product without the prior consent of ACORDA. If RUSH proposes to submit for written or oral publication any manuscript, abstract or the like relating to Compound or Product, it shall first deliver the proposed publication to ACORDA at least thirty (30) Business Days prior to planned submission. At the request of ACORDA, the submission of such publication may be delayed for up to fourteen (14) days in addition to the said thirty Business Days, including for issues of patent protection or other matters relating to the development of Compound or Product. If ACORDA requests modifications to the publication, RUSH shall edit such publication as

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality.  
Such omitted portions, which are marked with brackets [ ] and an asterisk \*, have been separately filed with the Commission.

reasonably necessary to prevent disclosure of trade secret or proprietary business information prior to submission of the publication or presentation.

## ARTICLE V PAYMENTS; ROYALTIES AND REPORTS

5.1. Up-front License Fee. In consideration of the rights granted by RUSH hereunder, ACORDA shall pay RUSH an up-front license fee of \$200,000 within five (5) Business Days after the Effective Date.

5.2. Milestone Payments. In further consideration of the rights granted by RUSH hereunder, ACORDA or its designees shall pay RUSH the following milestone payments, contingent upon occurrence of the specified event, with each milestone payment to be made no more than once with respect to the achievement of such milestone (but payable the first time such milestone is achieved) for Licensed Product:

- (a) US \$[\* \*] upon the commencement (first dosing of the first patient) of the first Phase 3 Clinical Trial;
- (b) US \$[\* \*] upon the completion of the first Phase 3 Clinical Trial;
- (c) US \$[\* \*] upon the FDA's acceptance for filing of the NDA; and
- (d) US \$[\* \*] upon receipt of first written Regulatory Approval of the NDA for marketing in the United States by the FDA.

ACORDA shall notify RUSH in writing within thirty (30) Business Days after the achievement of each milestone and such notice shall be accompanied by the appropriate milestone payment. The milestone payments described in this Section 5.2 shall be payable only upon the initial achievement of each milestone, and no amounts shall be due hereunder for any subsequent or repeated achievement of such milestones, regardless of the number of Licensed Products for which such milestone may be achieved.

5.3. Royalties and Other Payments.

### 5.3.1. Royalties

(a) Subject to the terms and conditions of this Agreement, and in further consideration of the rights granted by RUSH hereunder, ACORDA or its designees shall pay to RUSH royalties during the Base Royalty Term in an amount equal to (i) [\* \*] of Net Sales in each Royalty Year in the United States; and (ii) [\* \*] of Net Sales in each Royalty Year in each country in the Territory other than the United States. Royalties on Net Sales at the rates set forth in this Section 5.3.1(a) shall accrue as of the date of First Commercial Sale of Product in the applicable country and shall continue and accrue on Net Sales on a country-by-country basis until the expiration of the Base Royalty Term in such country. Thereafter, ACORDA shall be relieved of any royalty payment under this Section 5.3.1(a).

**Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality.  
Such omitted portions, which are marked with brackets [ ] and an asterisk \*, have been separately filed with the Commission.**

(b) Subject to the terms and conditions of this Agreement, and in further consideration of the rights granted by RUSH hereunder, ACORDA or its designees shall pay to RUSH royalties during the Reduced Royalty Term in an amount equal to (i) [\* \*] of Net Sales in each Royalty Year in the United States; and (ii) [\* \*] of Net Sales in each Royalty Year in each country in the Territory other than the United States. Royalties on Net Sales at the rates set forth in this Section 5.3.1(b) shall accrue as of the commencement of the Reduced Royalty Term in the applicable country and shall continue and accrue on Net Sales on a country-by-country basis until the expiration of the Reduced Royalty Term in such country. Thereafter, ACORDA shall be relieved of any royalty payment under this Agreement.

(c) The payment of royalties set forth above shall be subject to the following conditions:

- (A) only one payment shall be due with respect to the same unit of Product;
- (B) no royalties shall accrue on the disposition of Product by ACORDA, Affiliates or sublicensees as samples (promotion or otherwise) or as donations (for example, to non-profit institutions or government agencies) or to clinical trials or for research and and/or development or for compassionate or similar use where ACORDA does not receive revenue other than cost recovery; and
- (C) RUSH shall be responsible for payment of any royalties or other obligations owed by RUSH to any Third Party.

5.3.2. Affiliate and Sublicensee Sales. In the event that ACORDA transfers Compound or Product to one of its Affiliates or sublicensees, there shall be no royalty due at the time of transfer. Subsequent sales of Product by the Affiliates or sublicensees to Third Parties such as patients, hospitals, medical institutions, health plans or funds, wholesalers (which are not sublicensees), pharmacies or other retailers, shall be reported as Net Sales hereunder.

5.3.3. Third Party Licenses. If one or more licenses from a Third Party or Third Parties are obtained by ACORDA in order to develop, make, have made, use, sell or import Compound or Product in a particular country, [\* \*] of any royalties or other payments paid under such Third Party patent licenses by ACORDA in such country for such Calendar Quarter shall be creditable against the royalty or other payments payable to RUSH by ACORDA in such country; provided, however, that the amount credited in any Calendar Quarter shall not exceed [\* \*] of the royalties that would have otherwise been payable to RUSH for such Calendar Quarter.

5.3.4. Combination Product. Notwithstanding the provisions of Section 5.3.1, in the event a Product is sold as a combination product with other biologically active components, Net Sales, for purposes of royalty payments on the combination product, shall be calculated by multiplying the Net Sales of that combination product by the

fraction A/B, where A is the gross selling price of the Product sold separately and B is the gross selling price of the combination product. If no such separate sales are made, Net Sales for royalty determination shall be calculated by multiplying Net Sales of the combination product by the fraction C/(C+D), where C (excluding the fully allocated cost of the other biologically active component in question) is the fully allocated cost of the Compound and D is the fully allocated cost of such other biologically active components.

5.4. Reports; Payment of Royalty. During the term of the Agreement for so long as royalty payments are due, ACORDA shall furnish to RUSH a written report for each Calendar Quarter showing the Net Sales of all Products subject to royalty payments during the reporting period and the calculation of the royalties payable to RUSH under this Agreement, including deductions from Net Sales. Reports shall be due on the forty-fifth (45<sup>th</sup>) day following the close of each Calendar Quarter. Royalties shown to have accrued by each royalty report, if any, shall be due and payable on the date such report is due. ACORDA shall keep complete and accurate records in sufficient detail to enable the royalties hereunder to be determined. ACORDA shall retain such records for twenty-four (24) months after submission of the corresponding report.

5.5. Audits. Upon the written request of RUSH and not more than once during the twelve (12) month period next following the expiration of each Royalty Year during the term of the Agreement, ACORDA shall, at RUSH's expense, permit an independent certified public accounting firm selected by RUSH and reasonably acceptable to ACORDA to have access during normal business hours, upon thirty (30) days prior notice to ACORDA, to such of the records of ACORDA as may be reasonably necessary to verify the accuracy of the royalty reports hereunder for any Royalty Year ending not more than twenty-four (24) months prior to the date of such request. The accounting firm shall provide a written report as soon as practicable, which shall disclose only whether the royalty reports are correct or incorrect and the specific details concerning any discrepancies. This Section 5.5 shall survive the expiration or termination of this Agreement for a period of two years.

5.5.1. If such accounting firm concludes that additional royalties were owed during such period, ACORDA shall pay the additional royalties within sixty (60) days of the date RUSH delivers to ACORDA such accounting firm's written report so concluding; provided however, that, in the event that ACORDA shall not be in agreement with the conclusion of such report (a) ACORDA shall not be required to pay such additional royalties and (b) such matter shall be resolved pursuant to the provisions of Section 9.6 herein. In the event such accounting firm concludes that amounts were overpaid by ACORDA during such period, such over payment will be credited against future royalties; provided, however, that, in the event that RUSH shall not be in agreement with the conclusion of such report (x) such matter shall be resolved pursuant to the provisions of Section 9.6 herein and (y) in the event that the overpayment to RUSH exceeds royalties due and owing to Rush over the term of the agreement, RUSH shall reimburse ACORDA within 60 days for any remaining overpayment. The fees charged by such accounting firm shall be paid by RUSH; provided, however, that if an error in favor of RUSH of more than five percent (5%) of the royalties due hereunder for the period being reviewed is discovered, then

ACORDA shall pay the reasonable fees and expenses charged by such accounting firm.

5.5.2. Upon the expiration of twenty-four (24) months following the end of any Royalty Year (subject to tolling of such period during the pendency of an audit relating to such period under Section 5.5.1 above) the calculation of royalties payable with respect to such year shall be binding and conclusive upon RUSH, and ACORDA shall be released from any liability or accountability with respect to royalties for such year.

5.5.3. RUSH shall treat all financial information subject to review under this Section 5.5 in accordance with the confidentiality provisions of this Agreement.

5.6. Payment Exchange Rate. All payments to RUSH under this Agreement shall be made in United States dollars. In the case of sales outside the United States, the rate of exchange to be used in computing Net Sales shall be calculated monthly in accordance with the conversion rates published in the Wall Street Journal, Eastern edition (if available).

5.7. Tax Withholding. If laws, rules or regulations require withholding of income taxes or other taxes imposed upon payments set forth in this Article V, RUSH shall provide ACORDA, prior to any such payment, annually or more frequently if required, with all forms or documentation required by any applicable taxation laws, treaties or agreements to such withholding or as necessary to claim a benefit thereunder (including, but not limited to Form W-8BEN or any successor forms) and ACORDA shall make such withholding payments as required and subtract such withholding payments from the payments set forth in this Article V. ACORDA will use commercially reasonable efforts consistent with its usual business practices and cooperate with RUSH to ensure that any withholding taxes imposed are reduced as far as possible under the provisions of the current or any future taxation treaties or agreements between foreign countries.

5.8. Exchange Controls. Notwithstanding any other provision of this Agreement, if at any time legal restrictions prevent the prompt remittance of part or all of the royalties with respect to Net Sales in any country, payment shall be made through such lawful means or methods as ACORDA may determine. When in any country the law or regulations prohibit both the transmittal and deposit of royalties on sales in such a country, royalty payments shall be suspended for as long as such prohibition is in effect (and such suspended payments shall not accrue interest), and promptly after such prohibition ceases to be in effect, all royalties or other payments that ACORDA or its Affiliates would have been obligated to transmit or deposit, but for the prohibition, shall be deposited or transmitted, as the case may be, to the extent allowable (with any interest earned on such suspended royalties which were placed in an interest-bearing bank account in that country, less any transactional costs). If the royalty rate specified in this Agreement should exceed the permissible rate established in any country, the royalty rate for sales in such country shall be adjusted to the highest legally permissible or government-approved rate.

**ARTICLE VI**  
**REPRESENTATIONS AND WARRANTIES**

6.1. **RUSH Representations and Warranties.** RUSH represents and warrants to ACORDA that as of the Effective Date:

- (a) Each of this Agreement and the Side Agreement has been duly executed and delivered by RUSH and constitutes legal, valid, and binding obligations enforceable against RUSH in accordance with their respective terms;
- (b) no approval, authorization, consent, or other order or action of or filing with any court, administrative agency or other governmental authority is required for the execution and delivery by RUSH of this Agreement or the Side Agreement or the consummation by RUSH of the transactions contemplated hereby or thereby except such consents or filings as are contemplated by this Agreement;
- (c) RUSH has the full corporate power and authority to enter into and deliver this Agreement and the Side Agreement, to perform and to grant the licenses granted under Article II hereof and to consummate the transactions contemplated hereby and by the Side Agreement; all corporate acts and other proceedings required to be taken to authorize such execution, delivery, and consummation have been duly and properly taken and obtained;
- (d) With the exception of the Rush/Elan Agreements, which have terminated in their entirety pursuant to the Side Agreement, RUSH has not previously assigned, transferred, conveyed or otherwise encumbered its right, title and interest in the Compound or Product or the RUSH Know-How or entered into any agreement with any Third Party which is in conflict with the rights granted to ACORDA pursuant to this Agreement;
- (e) RUSH is the sole and exclusive owner of the RUSH Know-How, all of which are free and clear of any security interests, liens, charges, encumbrances or restrictions on license, and no Third Party has any claim of ownership or other rights with respect to the RUSH Know-How, whatsoever, except that RUSH agrees and acknowledges that the Orphan Designation has been assigned to ACORDA;
- (f) RUSH has the sole and exclusive authority to grant the rights and licenses granted under Article II and, with the exception of the Rush/Elan Agreements, which have terminated in their entirety pursuant to the Side Agreement, RUSH has not previously granted, and will not grant, or engage in any discussions to grant, during the term of this Agreement, any right, license or interest in and to the Compound or Product or the RUSH

Know-How, or any portion thereof, inconsistent with the license granted to ACORDA herein;

- (g) there are no claims, judgments or settlements against or owed by RUSH or pending or, to the best of its knowledge, threatened claims or litigation relating to the Compound or the Rush Know-How;
- (h) RUSH will use reasonable efforts to disclose to ACORDA all relevant information known by it regarding the Rush Know-How reasonably related to the activities contemplated under this Agreement to the extent such Rush know-how has not previously been disclosed;
- (i) in connection with development of the Rush Know-How, RUSH has complied in all material respects with applicable U.S. laws and regulations;
- (j) RUSH has not filed and is not the owner in any country in the Territory of any patents or patent applications or of any certificates of invention or applications for certificates of invention, relating to Compound or Product; and
- (k) With the exception of the Rush/Elan Agreements, which have terminated in their entirety pursuant to the Side Agreement, there are no contracts, agreements or any other arrangements between RUSH and any Third Party relating to the research, development or commercialization of the Compound or Product.

6.2. ACORDA Representations and Warranties. ACORDA represents and warrants to RUSH that as of the Effective Date:

- (a) Each of this Agreement and the Side Agreement have been duly executed and delivered by it and constitutes legal, valid, and binding obligations enforceable against ACORDA in accordance with their respective terms;
- (b) it has full corporate power and authority to execute and deliver this Agreement and the Side Agreement and to consummate the transactions contemplated hereby and thereby. All corporate acts and other proceedings required to be taken to authorize such execution, delivery, and consummation have been duly and properly taken and obtained;
- (c) no approval, authorization, consent, or other order or action of or filing with any court, administrative agency or other governmental authority is required for the execution and delivery by it of this Agreement or the Side Agreement or the consummation by it of the transactions contemplated hereby or thereby.

## ARTICLE VII

7.1. Indemnification. ACORDA shall defend, indemnify and hold harmless RUSH from and against any and all loss, cost and liability, including RUSH's reasonable attorneys fees and costs ("Losses"), arising in connection with claims made by Third Parties respecting the manufacture, sale or use of any Product by such Third Party ("Claims"). RUSH shall give ACORDA prompt notice of any such Loss or claim, shall cooperate in its defense, and shall give ACORDA full authority to defend and settle such claim on RUSH's behalf.

7.2. The indemnity obligation set forth in Section 7.1 above shall not apply in the case of Losses or Claims caused by or based on (i) RUSH's gross negligence or willful misconduct; (ii) any breach of this Agreement by RUSH; or (iii) any violation of RUSH's representations or warranties hereunder.

## ARTICLE VIII TERM AND TERMINATION

8.1. Term and Expiration. This Agreement shall be effective as of the Effective Date and unless terminated earlier pursuant to Section 8.2 below, the term of this Agreement shall continue in effect until expiration of all royalty or other payment obligations hereunder.

8.2. Termination.

8.2.1 Termination for Cause. Either Party may terminate this Agreement by notice to the other Party at any time during the term of this Agreement as follows:

- (a) if the other Party is in breach of any material obligation hereunder by causes and reasons within its control, or has breached, in any material respect, any representations or warranties set forth in Article VI, and has not cured such breach within ninety (90) days after notice requesting cure of the breach, provided, however, that if the breach is not capable of being cured within ninety (90) days of such written notice, the Agreement may not be terminated so long as the breaching Party commences and is taking commercially reasonable actions to cure such breach as promptly as practicable; or
- (b) upon the filing or institution of bankruptcy, reorganization, liquidation or receivership proceedings, or upon an assignment of a substantial portion of the assets for the benefit of creditors by the other Party; provided, however, in the case of any involuntary bankruptcy, reorganization, liquidation, receivership or assignment proceeding such right to terminate shall only become effective if the Party consents to the involuntary proceeding or such proceeding is not dismissed within ninety (90) days after the filing thereof.

#### 8.2.2 Licensee Rights Not Affected.

All rights and licenses granted pursuant to this Agreement are, and shall otherwise be deemed to be, for purposes of Section 365(n) of the Bankruptcy Code licenses of rights to “intellectual property” as defined under Section 101(35A) of the Bankruptcy Code. The Parties agree that ACORDA and RUSH shall retain and may fully exercise all of their respective rights, remedies and elections under the Bankruptcy Code. The Parties further agree that, in the event of the commencement of a bankruptcy or reorganization case by or against a Party under the Bankruptcy Code, the other Party shall be entitled to all applicable rights under Section 365 (including 365(n)) of the Bankruptcy Code. Upon rejection of this Agreement by a Party or a trustee in bankruptcy for such Party, pursuant to Section 365(n), the other Party may elect (i) to treat this Agreement as terminated by such rejection or (ii) to retain its rights (including any right to enforce any exclusivity provision of this Agreement) to intellectual property (including any embodiment of such intellectual property) under this Agreement and under any agreement supplementary to this Agreement for the duration of this Agreement and any period for which this Agreement could have been extended by such other Party, subject, however, to the continued payment of all amounts owing under Section 5.3 of this Agreement, all of which amounts shall be deemed to be royalties for purposes of Section 365(n) of the Bankruptcy Code. Upon written request to the trustee in bankruptcy or bankrupt Party, the trustee or Party, as applicable, shall (i) provide to the other Party any intellectual property (including such embodiment) held by the trustee or the bankrupt Party and shall provide to the other Party a complete duplicate of (or complete access to, as appropriate) any such intellectual property and all embodiments of such intellectual property and (ii) not interfere with the rights of the other Party to such intellectual property as provided in this Agreement or any agreement supplementary to this Agreement, including any right to obtain such intellectual property (or such embodiment or duplicates thereof) from a Third Party.

#### 8.3.

Effect of Expiration or Termination. Expiration or termination of this Agreement shall not relieve the Parties of any obligation accruing prior to such expiration or termination. ACORDA and its Affiliates and sublicensees shall have the right to sell or otherwise dispose of the stock of any Product subject to this Agreement then on hand or in process of manufacture and ACORDA will continue to pay Rush royalties pursuant to Article V after the expiration or termination of this Agreement for any such Product sold. In addition to any other provisions of this Agreement which by their terms continue after the expiration of this Agreement, the provision of Article IV shall survive the expiration or termination of this Agreement and shall continue in effect for five (5) years from the date of expiration or termination and the provisions of Article IX shall survive the expiration or termination of this Agreement. Upon any termination of this Agreement, each party shall promptly return to the other party all Proprietary Information received from the other party (except one copy of which may be retained for archival purposes). In addition, any other provision required to interpret and enforce the Parties’ rights and obligations under this Agreement shall also survive, but only to the extent required for the full observation and performance of this Agreement. Any expiration or early termination of this Agreement shall be without prejudice to the rights of any Party against the other

accrued or accruing under this Agreement prior to termination. In the event ACORDA breaches any of the financial provisions contained in this Agreement, in lieu of any other remedy that may be available, RUSH shall be entitled to pursue its remedies at law, but shall not be entitled to injunctive relief.

## **ARTICLE IX** **MISCELLANEOUS**

- 9.1. **Right to Develop Independently**. Nothing in this Agreement will impair ACORDA's right to independently acquire, license, develop, or have others develop for it, products similar to or performing functions similar to Product, or similar technology performing similar functions to the Products or to market and distribute products based on other technology.
- 9.2. **Force Majeure**. Neither Party shall be held liable or responsible to the other Party nor be deemed to have defaulted under or breached the Agreement for failure or delay in fulfilling or performing any term of the Agreement during the period of time when such failure or delay is caused by or results from causes beyond the reasonable control of the affected Party including, but not limited to, fire, flood, embargo, war, acts of war (whether war be declared or not), insurrection, riot, civil commotion, strike, lockout or other labor disturbance, act of God or act, omission or delay in acting by any governmental authority or the other Party. The affected Party shall notify the other Party of such force majeure circumstances as soon as reasonably practicable.
- 9.3. **Assignment**. The Agreement may not be assigned or otherwise transferred without the prior written consent of the other Party; provided, however, that ACORDA may assign this Agreement to an Affiliate or in connection with the transfer or sale of its business or all or substantially all of its assets related to Compound or Product or in the event of a merger, consolidation, change in control or similar corporate transaction. Any permitted assignee shall assume all obligations of its assignor under this Agreement.
- 9.4. **Severability**. In the event that any of the provisions contained in this Agreement are held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby, unless the absence of the invalidated provision(s) adversely affect the substantive rights of the Parties. In such event, the Parties shall replace the invalid, illegal or unenforceable provision(s) with valid, legal and enforceable provision(s) which, insofar as practical, implement the purposes of this Agreement.
- 9.5. **Notices**. All notices or other communications which are required or permitted hereunder shall be in writing and sufficient if delivered personally, sent by facsimile (and promptly confirmed by personal delivery, registered or certified mail or overnight courier), sent by nationally-recognized overnight courier or sent by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

if to ACORDA to:

ACORDA THERAPEUTICS, INC.  
15 Skyline Drive  
Hawthorne, New York 10532

Attention: : President  
Fax No.: 914.347.4560

if to RUSH to:

RUSH-PRESBYTERIAN-ST. LUKE'S MEDICAL CENTER  
1725 W. Harrison Street  
Chicago, Illinois 60612  
Attention: Intellectual Property Office/General Counsel's Office  
Fax No.: 312-942-2055

or to such other address as the Party to whom notice is to be given may have furnished to the other Parties in writing in accordance herewith. Any such communication shall be deemed to have been given when delivered if personally delivered or sent by facsimile on a Business Day, upon confirmed delivery by nationally-recognized overnight courier if so delivered and on the third Business Day following the date of mailing if sent by registered or certified mail.

9.6. Applicable Law and Dispute Resolution. The Agreement shall be governed by and construed in accordance with the laws of the United States of America and State of New York without reference to any rules of conflict of laws.

(a) The Parties agree to attempt initially to solve all claims, disputes, or controversies arising under, out of, or in connection with this Agreement (a "Dispute") by conducting good faith negotiations. Any Disputes which cannot be resolved by good faith negotiation within twenty (20) Business Days, shall be referred, by written notice from either Party to the other, to the Chief Executive Officer of each Party. Such Chief Executive Officers shall negotiate in good faith to achieve a resolution of the Dispute referred to them within twenty (20) Business Days after such notice is received by the Party to whom the notice was sent. If the Chief Executive Officers are unable to settle the Dispute between themselves within twenty (20) Business Days, they shall so report to the Parties in writing. The Dispute shall then be referred to mediation as set forth in the following subsection (b).

(b) Upon the Parties receiving the Chief Executive Officers' report that the Dispute referred to them pursuant to subsection (a) has not been resolved, the Dispute shall be referred to mediation by written notice from either Party to the other. The mediation shall be conducted pursuant to the American Arbitration Association ("AAA") procedures. The place of the mediation shall be Chicago, Illinois. If the Parties have not reached a settlement within twenty (20) Business Days of the date of the notice of mediation, the Dispute shall be referred to arbitration pursuant to subsection (c) below.

(c) If after the procedures set forth in subsections (a) and (b) above, the Dispute has not been resolved, a Party shall decide to institute arbitration proceedings, it shall give written notice to that effect to the other Party. The Parties shall refrain from instituting the arbitration proceedings for a period of sixty (60) days following such notice. During such period, the Parties shall continue to make good faith efforts to amicably resolve the dispute without arbitration. If the Parties have not reached a settlement during that period the arbitration proceedings shall go forward and be governed by the AAA rules then in force. Each such arbitration shall be conducted by a panel of three arbitrators: one arbitrator shall be appointed by each of RUSH and ACORDA and the third arbitrator, who shall be the Chairman of the tribunal, shall be appointed by the two-Party appointed arbitrators. Any such arbitration shall be held in Chicago, Illinois, USA.

The arbitrators shall have the authority to direct the Parties as to the manner in which the Parties shall resolve the disputed issues, to render a final decision with respect to such disputed issues, or to grant specific performance with respect to any such disputed issue. Judgment upon the award so rendered may be entered in any court having jurisdiction or application may be made to such court for judicial acceptance of any award and an order of enforcement, as the case may be. Nothing in this Section shall be construed to preclude either Party from seeking provisional remedies, including but not limited to, temporary restraining orders and preliminary injunctions, from any court of competent jurisdiction, in order to protect its rights pending arbitration, but such preliminary relief shall not be sought as a means of avoiding arbitration. In no event shall a demand for arbitration be made after the date when institution of a legal or equitable proceeding based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations. Each Party shall bear its own costs and expenses incurred in connection with any arbitration proceeding and the Parties shall equally share the cost of the mediation and arbitration levied by the AAA.

Any mediation or arbitration proceeding entered into pursuant to this Section 9.6 shall be conducted in the English language. Subject to the foregoing, for purposes of this Agreement, each Party consents, for itself and its Affiliates, to the jurisdiction of the courts of the State of New York, county of New York and the U.S. District Court for the Southern District of New York.

9.7. Entire Agreement. This Agreement, together with the exhibits and schedules hereto, contains the entire understanding of the Parties with respect to the subject matter hereof and supersedes all previous writings and understandings between the Parties. This Agreement may be amended, or any term hereof modified, only by a written instrument duly executed by all Parties hereto.

9.8. Independent Contractors. It is expressly agreed that the Parties shall be independent contractors and that the relationship between the Parties shall not constitute a partnership, joint venture or agency. Neither Party shall have the authority to make any statements, representations or commitments of any kind, or to take any action, which shall be binding on the other Party, without the prior consent of such other Party.

- 9.9. **Waiver**. The waiver by a Party hereto of any right hereunder or the failure to perform or of a breach by another Party shall not be deemed a waiver of any other right hereunder or of any other breach or failure by said other Party whether of a similar nature or otherwise.
- 9.10. **Further Assurances**. At any time or from time to time on and after the Effective Date, RUSH shall at the request of ACORDA (i) deliver to ACORDA such records, data or other documents consistent with the provisions of this Agreement, (ii) execute, and deliver or cause to be delivered, all such consents, documents or further instruments of transfer or license, and (iii) take or cause to be taken all such actions as ACORDA may reasonably deem necessary or desirable in order for ACORDA to obtain the full benefits of this Agreement and the transactions contemplated hereby.
- 9.11. **Headings**. The captions to the several Articles and Sections hereof are not a part of the Agreement, but are merely guides or labels to assist in locating and reading the several Articles and Sections hereof.
- 9.12. **Counterparts**. The Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- 9.13. **Use of Names**. Except as otherwise provided in this Agreement, neither Party shall not use the name of the other Party in relation to this transaction in any public announcement, press release or other public document without the consent of the other Party (which consent shall not be unreasonably withheld or delayed), except as may be required by applicable law.
- 9.14. **LIMITATION OF LIABILITY**. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT CONSEQUENTIAL DAMAGES ARISING OUT OF THIS AGREEMENT, HOWEVER CAUSED, UNDER ANY THEORY OF LIABILITY.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above.

**RUSH-PRESBYTERIAN-ST. LUKE'S MEDICAL CENTER**

By: /s/ James T. Frankenbach  
Name: James T. Frankenbach  
Title: Senior Vice President

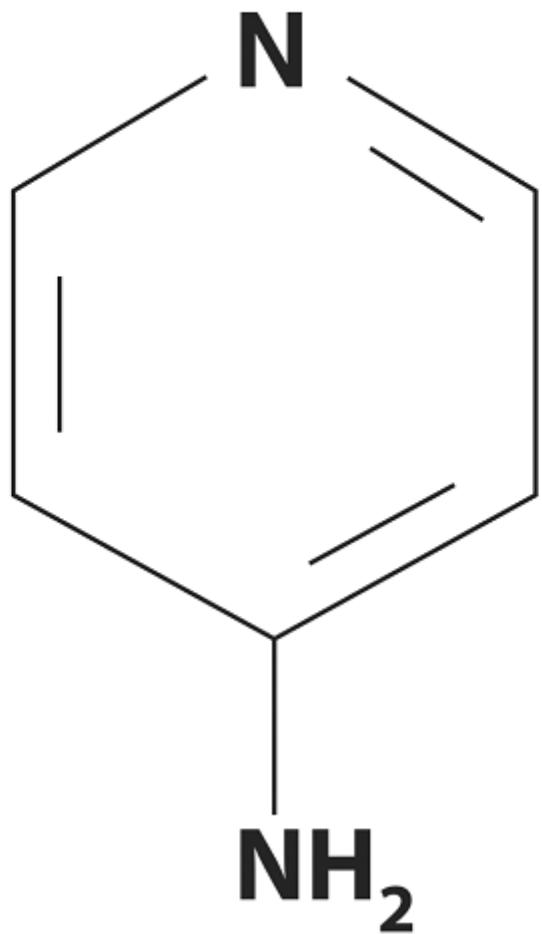
**ACORDA THERAPEUTICS, INC.**

By: /s/ Ron Cohen  
Name: Ron Cohen  
Title: President and Chief Executive Officer

SCHEDULE 1.7

DIAGRAM OF COMPOUND

**4-aminopyridine (“4-AP”), C<sub>5</sub>H<sub>6</sub>N<sub>2</sub>, MW 94**



Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality.  
Such omitted portions, which are marked with brackets [ ] and an asterisk \*, have been separately filed with the Commission.

## **SCHEDULE 1.11**

### **ELAN PATENT RIGHTS**

For purposes of this Agreement, Elan Patent Rights shall mean any and all rights under any and all patents and patent applications now existing, currently pending or hereafter filed, owned or acquired or licensed by Elan (and/or its Affiliates) which would be infringed by the manufacture, use or sale of the Product, the current status of which is set forth below. Elan Patent Rights shall also include all continuations, continuations-in-part, divisionals and re-issues of such patents and patent applications and any patents issuing thereon and extensions of any patents licensed hereunder. Elan Patent Rights shall further include any patents or patent applications covering any improved methods of making or using the Product invented or acquired by Elan (and/or its Affiliates) during the term of the Elan/Acorda Agreement and under which Elan (and/or its Affiliates) has a right to grant a licence under the Elan/Acorda Agreement, and Elan's (and/or its Affiliates) interest in any intellectual property conceived reduced to practice or otherwise developed in connection with the Project (as defined in the Elan/Acorda Agreement).

1806	Formulations and their use in the treatment of neurological diseases	<u>Pending :</u> Canada [* *] Ireland [* *] Japan [* *]
		<u>Issued :</u> Australia 657706 Europe 484186 New Zealand 240439 South Africa 91/8711 United States 5370879 5540938 5580580

**SIDE AGREEMENT****Exhibit 10.11****SIDE AGREEMENT**

REFERENCE IS MADE to (i) the License Agreement effective as of September 26, 2003, by and between RUSH-PRESBYTERIAN ST. LUKE'S MEDICAL CENTER, an Illinois not-for-profit corporation and having its principal office at 1725 W. Harrison St. Chicago, Ill. 60612 ("Rush"), and ACORDA THERAPEUTICS, INC., a corporation organized and existing under the laws of the State of Delaware and having its principal office at 15 Skyline Drive, Hawthorne, New York 10532 ("Acorda") (the "Rush/Acorda License"), and (ii) the Amended and Restated License and Supply Agreement effective as of September 26, 2003 by and between Acorda and ELAN CORPORATION, PLC., a public limited company incorporated under the laws of Ireland and having its registered office at Lincoln House, Lincoln Place, Dublin 2, Ireland ("Elan") (the "Elan/Acorda License"). The Rush/Acorda License and the Elan/Acorda License are sometimes collectively referred to herein as the "Novation Agreements".

REFERENCE IS FURTHER MADE to (i) the option agreement, dated September 7, 1990 (the "Option Agreement"), between RUSH and ELAN PHARMACEUTICAL RESEARCH CORPORATION ("EPRC"), a predecessor of Elan Drug Delivery Inc., a wholly-owned subsidiary of Elan, and (ii) the license agreement dated November 13, 1990 (the "Rush/Elan License"), between RUSH and EPRC. The Option Agreement and the Rush/Elan License are sometimes collectively referred to as the "Rush/Elan Agreements".

WHEREAS, in connection with the respective parties desire to enter into and in consideration of the Novation Agreements, Rush, Acorda and Elan have agreed to enter into this Side Agreement with the intention to set forth (i) the termination of the Rush/Elan Agreements; and (ii) the relative rights of the parties hereto related to certain matters under the Novation Agreements.

NOW THEREFORE, in consideration of the premises and the mutual covenants hereinafter recited and set forth in the Novation Agreements and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the Parties agree as follows:

1. Effective on the Effective Date, the Rush/Elan Agreements are hereby cancelled and terminated in their entirety. Notwithstanding any provision contained in the Rush/Elan Agreements, neither Rush nor Elan shall have any obligation or liability to the other Party under the Rush/Elan Agreements or in connection with the termination thereof except as set forth in this Side Agreement.

2. In the event that Acorda has breached any financial or other curable obligation under the Rush/Acorda License which breach would give Rush the right, pursuant to the Section 8.3.1 of the Rush/Acorda License, to terminate the Rush/Acorda License, Rush shall send Elan a copy of any notice sent to Acorda of such breach, including a description of such breached obligation, and of any failure to remedy such breach within the specified time period. If Acorda fails to remedy such breach within the specified period, Elan shall have the right, but not the obligation, after consultation with Acorda, to remedy such breach on Acorda's behalf within sixty (60) days after receiving notice of Acorda's failure to remedy such breach provided,

---

however, that Elan shall not have the right to cure such breach in the event that such breach is due to the fault of Elan. In the event Elan remedies such breach, Rush shall not have the right to terminate the Rush/Acorda License and Acorda shall cooperate with Elan to the extent necessary and reasonable for Elan to enforce its rights with respect to Rush under this Side Agreement.

3. In the event that Acorda has committed a non-curable breach of the Rush/Acorda License which breach would give Rush the right, pursuant to Section 8.3.1 of the Rush/Acorda License, to terminate the Rush/Acorda License, then Rush shall copy Elan on its written notice to Acorda of and describing such breach and describing any Acorda obligations under the Rush/Acorda License, and Elan shall have the right, but not the obligation, after consultation with Acorda, to assume all of Acorda's obligations under the Rush/Acorda License, provided, , that Elan shall have a good faith expectation that it has the intention and capability to perform such obligations and, provided further that Elan shall not have the right to assume all of Acorda's rights and obligations under the Rush/Acorda License in the event that such breach is due to the fault of Elan. In the event Elan assumes all of Acorda's obligations under the Rush/Acorda License pursuant to this Paragraph 3, Acorda shall assign to Elan all of Acorda's rights and remedies under the Rush/Acorda License and shall cooperate with Elan to the extent necessary and reasonable for Elan to enforce Elan's rights and remedies vis a vis Rush under the Rush/Acorda License and this Side Agreement. In the event that Elan does not assume Acorda's obligations under the Rush/Acorda License under this Paragraph 3, Rush shall have the right to terminate the Rush/Acorda License.

4. Rush agrees that in the event that Rush terminates the Rush/Acorda License pursuant to Section 8.3.1 thereof, Rush shall promptly provide Elan with written notice of such termination, together with a description of the basis for such termination, and Rush shall offer to Elan the right to assume all rights and obligations of Acorda under the Rush/Acorda License. Should Elan within thirty (30) days following receipt of such notice from Rush, provide to Rush written notice of its desire to assume such rights, remedies and obligations of Acorda and accept the grant of such rights from Rush, then Rush shall not terminate the Rush/Acorda License until expiration of such thirty (30) day period and, thereafter, all rights of Acorda under the Rush/Acorda License shall be immediately granted to Elan, such licenses from Rush shall be immediately granted, and Elan shall concurrently assume all obligations of Acorda under the Rush/Acorda License provided that Elan shall have a good faith expectation that it has the intention and capability to perform such obligations. In the event that Elan shall assume and perform Acorda's rights and obligations under the Rush/Acorda License, Acorda shall have no further obligations to Rush with respect to the Rush/Acorda License. In the event that Elan does not assume Acorda's obligations under the Rush/Acorda License under this Paragraph 4, Rush shall have the right to terminate the Rush/Acorda License.

5. In the event that the Elan/Acorda Agreement is terminated by Elan in accordance with the terms thereof, Elan shall promptly provide Rush with written notice of such termination, together with a description of the basis for such termination, and Rush shall offer to Elan the right to assume all rights and obligations of Acorda under the Rush/Acorda License. Should Elan within thirty (30) days following receipt of such notice from Rush, provide to Rush written notice of its desire to assume such rights and obligations of Acorda and accept the grant of such rights from Rush, then all rights of Acorda under the Rush/Acorda License shall be granted to

Elan and Elan shall concurrently assume all obligations of Acorda under the Rush/Acorda License, provided that Elan shall have a good faith expectation that it has the intention and capability to perform such obligations. In the event that Elan shall assume and perform Acorda's rights and obligations under the Rush/ Acorda License, Acorda shall have no further obligations to Rush with respect to the Rush/Acorda License.

6. Rush, on behalf of itself and its respective heirs, executors, successors and assigns hereby fully and forever releases and discharges Elan, Acorda, EPRC, and their respective affiliates, heirs, executors, successors, agents, licensees, officers and directors, from and agrees not to sue any of such released parties concerning, any and all claims, actions, obligations, duties, causes of action, whether now known or unknown, suspected or unsuspected, that either of them may possess based upon or arising out of any matter, cause, fact, thing, act, or omission whatsoever occurring or existing at any time prior to and including the Effective Date (collectively, the "Released Matters"), including without limitation, any and all claims relating to 4-aminopyridine. For the avoidance of this doubt, this release does not extend to matters that may arise after the Effective Date under this Side Agreement or under the Rush/Acorda License. Each of Elan, EPRC, and Acorda on behalf of itself and its respective heirs, executors, successors and assigns hereby fully and forever releases and discharges Rush and its affiliates, heirs, executors, successors, agents, licensees, officers and directors, from and agrees not to sue any of such released parties concerning, any Released Matters, including without limitation, any and all claims relating to 4-aminopyridine. For the avoidance of this doubt, this release does not extend to matters that may arise after the Effective Date under this Side Agreement or under the Rush/Acorda License.

7. Each party to this release acknowledges that they have been advised by legal counsel and are familiar with Section 1542 of the Civil Code of the State of California, which states:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

The parties each expressly waive any right or benefit which they have or may have under Section 1542 of the California Civil Code or any similar provision of the statutory or non-statutory law of any other jurisdiction, including Delaware. The parties acknowledge that in the future they may discover claims or facts in addition to or different from those that they now know or believe to exist with respect to the subject matter of this Release, and that each of Rush, Acorda, and Elan, as applicable, intends to fully, finally, and forever settle all of the Released Matters in exchange for good and valuable consideration. This release will remain in effect as a full and complete release notwithstanding the discovery or existence of any additional claims or facts.

The release provided for by this Paragraph 7 is executed voluntarily and without any duress or undue influence on the part or behalf of the parties hereto, with the full intent of releasing all claims. The parties represent and warrant that:

(a) they have read the release provided for herein;

(b) they have been represented in the preparation, negotiation, and execution of the release by legal counsel of their own choice;

and

(c) that, other than claims asserted by Rush (which claims are expressly included in the Released Matters), it has no knowledge of any claims asserted or assertable by any person or entity relating to the subject matter of this Agreement, which are not released by this release provided for by this Paragraph.

8. All notices or other communications which are required or permitted hereunder shall be in writing and sufficient if delivered personally, sent by facsimile (and promptly confirmed by personal delivery, registered or certified mail or overnight courier), sent by nationally-recognized overnight courier or sent by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

if to Acorda to: ACORDA THERAPEUTICS, INC..

15 Skyline Drive  
Hawthorne, New York 10532  
United States of America  
Attention: President  
Fax No.: 914.347.4560

if to Elan to: ELAN CORPORATION, PLC.  
c/o Elan International Services Ltd.  
102 St. James Court  
Flatts,  
Smiths FL04  
Bermuda  
Attention: Secretary  
Fax: +1 441 292 2224

if to EPRC to: Elan Drug Delivery Inc  
c/o Elan Pharmaceuticals Inc  
South San Francisco,  
800 Gateway Boulevard,  
South San Francisco,  
CA 94080, U.S.A.  
Fax 650 553 7165

if to Rush to:

RUSH-PRESBYTERIAN-ST. LUKE'S MEDICAL  
CENTER  
1725 W. Harrison St.  
Chicago, Ill. 60612  
United States of America  
Attention: Intellectual Property Office/General  
Counsel's Office  
Fax No.: 312. 942. 2055

9. This Side Agreement shall be effective as of September 26, 2003 ("Effective Date"), and shall be governed by the laws of the State of New York without reference to any rules of conflict of laws.

10. This Side Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have executed this Side Agreement as of the Effective Date.

ACORDA THERAPEUTICS, INC.

By: /s/ RON COHEN

Name: Ron Cohen  
Title: President and Chief Executive Officer

ELAN CORPORATION, PLC.

By: /s/ KEVIN INSLEY

Name: Kevin Insley  
Title: Authorized Signatory

ELAN DRUG DELIVERY INC.

By: /s/ JEAN M . DUVALL

Name: Jean M. Duvall  
Title: Vice President and Secretary

RUSH-PRESBYTERIAN-ST. LUKE'S MEDICAL CENTER

By: /s/ JAMES T . FRANKENBACH

Name: James T. Frankenbach  
Title: Senior Vice President

---

**Exhibit 10.12**

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

**RUSH PAYMENTS AGREEMENT**

REFERENCE IS MADE to (i) the License Agreement effective as of September 26, 2003, by and between **RUSH-PRESBYTERIAN-ST. LUKE'S MEDICAL CENTER**, an Illinois not-for-profit corporation and having its principal office at 1725 W. Harrison St. Chicago, Ill. 60612 ("Rush"), and **ACORDA THERAPEUTICS, INC.**, a corporation organized and existing under the laws of the State of Delaware and having its principal office at 15 Skyline Drive, Hawthorne, New York 10532 ("Acorda"), including the Side Agreement attached thereto as Exhibit 1.31 by and among Rush, Acorda and Elan (as defined below) (the "Side Agreement"), a copy of which is attached as **Exhibit A** hereto (the "Rush/Acorda License"); and (ii) the Amended and Restated License Agreement effective as of September 26, 2003 by and between Acorda and **ELAN CORPORATION, PLC.**, a public limited company incorporated under the laws of Ireland and having its registered office at Lincoln House, Lincoln Place, Dublin 2, Ireland ("Elan") (the "Elan/Acorda License"). The Rush/Acorda License and the Elan/Acorda License are sometimes collectively referred to herein as the "Novation Agreements" and Elan and Acorda are sometimes referred to herein as the "Parties".

WHEREAS, in connection with and in consideration of the Novation Agreements, Acorda and Elan have agreed to enter into this Rush Payments Agreement with the intention to set forth the respective allocation between the Parties of certain amounts payable under the Rush/Acorda License and certain other rights and obligations of the Parties.

NOW THEREFORE, in consideration of the premises and the mutual covenants hereinafter recited and set forth in the Novation Agreements and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the Parties agree as follows:

1. With respect to the US \$[\*\*] license fee set forth in Section 5.1 of the Rush/Acorda License, each of Acorda and Elan shall be responsible for [\*\*] of such license fee. Accordingly, on the Effective Date, Elan shall pay Acorda US\$[\*\*] as Elan's [\*\*] share of such payment.

2. With respect to milestone payments that become payable under Section 5.2 of the Rush/Acorda License, the following shall be applicable:

(a) Each of Acorda and Elan shall be responsible for [\*\*] of any milestone payments payable to Rush under Section 5.2 (a) or 5.2 (b) of the Rush/Acorda License. Accordingly, if the milestone events set forth in either Section 5.2 (a) or Section 5.2 (b) of the Rush/Acorda License are achieved, (x) Acorda shall so advise Elan in writing upon achievement of the applicable milestone event, and (y) Elan shall pay Acorda an amount equal to [\*\*] of the applicable milestone payment upon receipt of such notice as Elan's share of such payment; and

(b) Elan shall be responsible for [\*\*] of any milestone payments payable to Rush under Section 5.2 (c) of the Rush/Acorda License. Accordingly, if the milestone event set forth in Section 5.2 (c) of the Rush/Acorda License is achieved, Acorda shall so advise Elan in writing upon achievement of the applicable milestone event and Elan shall pay Acorda an amount equal to [\*\*] of the applicable milestone payment upon receipt of such notice.

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

3. In addition, Acorda shall pay to Elan an additional royalty of:

- (i) [\*\*] of NSP of the Product sold outside the US during the Base Royalty Term (as such term is defined in the Rush/Acorda License);
- (ii) [\*\*] of NSP of the Product sold outside the US during the Reduced Royalty Term (as such term is defined in the Rush/Acorda License);
- (iii) during the Reduced Royalty Term, [\*\*] of the difference between (a) the royalty that would have been payable by Acorda to Rush during the Base Royalty Term and (b) the royalty payable by Acorda to Rush during the Reduced Royalty Term under Section 5.3.1 of the Rush/Acorda License on such sales of Product in the applicable country; and/or
- (iv) after termination or expiration of Acorda's royalty obligations to Rush under the Rush/Acorda License in any country, [\*\*] of NSP of the Product in such country; (with the amounts payable under the foregoing subparagraphs (i), (ii) (iii) and/or (iv), as applicable, referred to as the "Additional Royalty");

provided, however, that in the event the provisions of Clause 5.6.2 or Clause 5.6.3 of the Elan/Acorda License are applicable, any Additional Royalty payable shall be limited to [\*\*] of NSP of Product. All payments of the Additional Royalty shall be made in accordance with the provisions of Clauses 5.6.4, 5.6.5 and 5.6.6 of the Elan/Acorda License, and Article 5.9 of the Elan/Acorda License, to the extent applicable.

4. In the event that Elan breaches any of its financial obligations and undertakings under Paragraph 2 of this Rush Payments Agreement, Acorda may offset and credit the amount of the unpaid financial obligation, together with accrued interest thereon, against any amounts payable from Acorda to Elan under the Elan/Acorda License including, without limitation, amounts payable under Section 3.4 of the Elan/Acorda License. In the event that it is determined that Acorda has incorrectly offset or credited any amounts pursuant to this Paragraph 4, Acorda shall promptly pay the incorrectly offset or credited amount, together with accrued interest thereon, to Elan.

5. In the event that Acorda has breached any financial or other curable obligation under the Rush/Acorda License which breach would give Rush the right, pursuant to the Section 8.2.1 of the Rush/Acorda License, to terminate the Rush/Acorda License and, pursuant to the terms of the Side Agreement, Elan has the right to and remedies such breach (provided, however, that Elan shall not have the right to remedy such breach if such breach has been consented to by Elan or is primarily due to the fault of Elan or if Elan is in breach of the terms of this Rush Payments Agreement or the Elan/Acorda License), Elan may charge Acorda an amount equal to the amount so paid by Elan to Rush to remedy such breach on behalf of Acorda. In the event that it is determined that Elan has incorrectly charged any amounts to Acorda pursuant to this

Paragraph 5 and Acorda has paid such amounts, Elan shall promptly repay to Acorda the incorrectly charged and paid amount, together with accrued interest thereon.

6. In the event that Rush terminates the Rush/Acorda License pursuant to Section 8.2.1 thereof as a result of a breach by Acorda and, pursuant to the terms of the Side Agreement, Elan has the right to and elects to assume the rights and obligations of Acorda under the Rush/Acorda License (provided, however, that Elan shall not have the right to assume such rights and obligations if such breach has been consented to by Elan, is primarily due to the fault of Elan or if Elan is in breach of the terms of this Rush Payments Agreement or the Elan/Acorda License), Elan may charge Acorda an amount equal to any amounts or financial obligations so paid or incurred by Elan to Rush pursuant to Elan's assumption of Acorda's obligations under the Rush/Acorda License.

7. Acorda agrees to indemnify Elan from and against any losses and liability arising from any claims made by Rush against Elan after the Effective Date resulting primarily from any acts or omissions of Acorda under the Rush/Acorda License. Elan shall give Acorda prompt notice of any such loss or liability, shall cooperate in its defense, and shall give Acorda full authority to defend and settle such claim on Elan's behalf. This indemnity obligation shall not apply in the case of losses primarily caused by or based on (i) Elan's acts or omissions; or (ii) any breach of this Rush Payments Agreement, the Side Agreement or the Elan/Acorda License by Elan.

In the event Elan has the right to and elects to cure any Acorda breach of, or assumes the rights and obligations of Acorda under the, Rush/Acorda License in accordance with the terms of the Side Agreement and this Rush Payments Agreement, Elan agrees to indemnify Acorda from and against any losses and liability arising from any claims made by Rush against Acorda resulting from any acts of Elan after the date that Elan cures such breach or assumes Acorda's obligations under the Rush/Acorda License. Acorda shall give Elan prompt notice of any such loss or liability, shall cooperate in its defense, and shall give Elan full authority to defend and settle such claim on Acorda's behalf. This indemnity obligation shall not apply in the case of losses primarily caused by or based on (i) Acorda's acts or omissions; or (ii) any breach of this Rush Payments Agreement, the Side Agreement or the Elan/Acorda License by Acorda.

8. All notices or other communications which are required or permitted hereunder shall be in writing and sufficient if delivered personally, sent by facsimile (and promptly confirmed by personal delivery, registered or certified mail or overnight courier), sent by nationally-recognized overnight courier or sent by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

if to Acorda to:

**ACORDA THERAPEUTICS, INC..**  
15 Skyline Drive  
Hawthorne, New York 10532  
Attention: President  
Fax No.: 914.347.4560

if to Elan to:

**ELAN CORPORATION, PLC.**  
c/o Elan International Services Ltd.  
102 St. James Court  
Flatts,  
Smiths FL04 Bermuda  
Attention: Secretary  
Fax No: +1 441 292 2224

9. This Rush Payments Agreement shall be effective as of the date set forth below ("Effective Date"), and shall be governed by the laws of the State of New York without reference to any rules of conflict of laws. Any disputes under this Agreement shall be governed by the dispute resolution provisions of Article 12.14 of the Elan/Acorda License.

10. This Rush Payments Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have executed this Rush Payments Agreement as of September\_\_\_\_, 2003.

**ACORDA THERAPEUTICS, INC.**

By: \_\_\_\_\_

Name:  
Title: President and Chief Executive Officer

**ELAN CORPORATION, PLC.**

By: \_\_\_\_\_

Name:  
Title:

## **EXHIBIT A**

### **RUSH/ACORDA LICENSE**

### **Exhibit 10.13**

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk \*, have been separately filed with the Commission.

#### **AMENDMENT No. 1 TO RUSH PAYMENTS AGREEMENT**

THIS AMENDMENT, dated as of October 27, 2003, by and between Acorda Therapeutics, Inc. (“Acorda”) and Elan Corporation, plc. (“Elan”) amends the Rush Payments Agreement effective as of September 26, 2003 (the “Payments Agreement”) by and between Acorda and Elan.

#### **W I T N E S S E T H:**

**WHEREAS**, Acorda and Elan desire to amend certain provisions relating to the timing of payments under the Payments Agreement upon the terms and conditions set forth herein;

**NOW, THEREFORE**, in consideration of the premises contained herein, and for other good and valuable consideration, the adequacy and receipt of which are hereby acknowledged, the parties hereto agree as follows:

1. Paragraph 2 (a) of the Payments Agreement is hereby amended and restated in its entirety to read as follows:

“(a) Each of Acorda and Elan shall be responsible for [\*\*] of any milestone payments payable to Rush under Section 5.2 (a) or 5.2 (b) of the Rush/Acorda License. Accordingly, if the milestone events set forth in either Section 5.2 (a) or Section 5.2 (b) of the Rush/Acorda License are achieved, (x) Acorda shall so advise Elan in writing upon achievement of the applicable milestone event, and (y) Elan shall pay Acorda an amount equal to [\*\*] of the applicable milestone payment within twenty-five (25) days after receipt of such notice as Elan’s share of such payment.”

2. Paragraph 2 (b) of the Payments Agreement is hereby amended and restated in its entirety to read as follows:

“(b) Elan shall be responsible for [\*\*] of any milestone payments payable to Rush under Section 5.2 (c) of the Rush/Acorda License. Accordingly, if the milestone event set forth in Section 5.2 (c) of the Rush/Acorda License is achieved, Acorda shall so advise Elan in writing upon achievement of the applicable milestone event and Elan shall pay Acorda an amount equal to [\*\*] of the applicable milestone payment within twenty-five (25) days after receipt of such notice.”

3. Except as expressly amended by this Amendment, all of the provisions of the Payments Agreement shall remain in full force and effect. All references to the Payments Agreement, from and after the date hereof, shall be to the Payments Agreement as amended by this Amendment.

---

4. This Amendment may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

**IN WITNESS WHEREOF**, the Parties have executed this Amendment as of the date first set forth above.

**Acorda Therapeutics, Inc.**

By: /s/ Ron Cohen  
Name: Ron Cohen  
Title: President and CEO

**Elan Corporation, plc .**

By: /s/  
Name:  
Title:

2

---

**Exhibit 10.14**

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

**AMENDED AND RESTATED LICENSE AGREEMENT**

by and between

**CANADIAN SPINAL RESEARCH ORGANIZATION**

and

**ACORDA THERAPEUTICS, INC.**

---

THIS AMENDED AND RESTATED LICENSE AGREEMENT made as of August 1, 2003 (the "Restatement Date"), by and between **CANADIAN SPINAL RESEARCH ORGANIZATION**, a not-for-profit corporation organized and existing under the laws of Ontario and having its principal office at 120 Newkirk Road, Unit 2, Richmond Hill, Ontario, L4C 9S7 ("CSRO") and **ACORDA THERAPEUTICS, INC.**, a corporation organized and existing under the laws of the State of Delaware and having its principal office at 16 Skyline Drive, Hawthorne, New York 10532 ("ACORDA").

W I T N E S S E T H:

WHEREAS, CSRO owns or has rights to certain Patent Assets and Know How (each as defined herein) relating to the use of 4-aminopyridine ("4-AP") in the reduction of chronic pain and spasticity in a spinal cord injured patient;

WHEREAS, CSRO, Purdue and McMaster have entered into that certain Inter-Institutional Agreement, effective as of October 18, 1993 (the "Inter-Institutional Agreement"), pursuant to which CSRO acquired the sole authority to license rights to any patents included in the Patent Assets;

WHEREAS, pursuant to the Assignments, CSRO obtained an Assignment from the Inventors of the Patent Assets (all as defined herein);

WHEREAS, pursuant to a License Agreement (the "1995 Agreement"), effective August 9, 1995 (the "1995 Agreement Effective Date"), between CSRO and ACORDA, CSRO granted ACORDA an exclusive license under the Patent Assets; and

WHEREAS, the Parties agree that the 1995 Agreement should be amended and restated to reflect the intentions of the Parties, effective as of the 1995 Agreement Effective Date, except where indicated to be effective as of the Restatement Date;

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the Parties hereby agree that the 1995 Agreement, and all of the terms, conditions and provisions of the 1995 Agreement, are hereby superceded and replaced in their entirety by this Agreement and the terms, conditions and provisions hereof, effective as of the 1995 Agreement Effective Date, as follows:

**ARTICLE I**  
**DEFINITIONS**

Unless specifically set forth to the contrary herein, the following terms, where used in the singular or plural, shall have the respective meanings set forth below:

- 1.1.     **"Affiliate"** shall mean (i) any corporation or business entity of which more than fifty percent (50%) of the securities or other ownership interests representing the equity, the voting stock or general partnership interest are owned, controlled or held, directly or indirectly, by a Party; (ii) any corporation or business entity which, directly or indirectly,

owns, controls or holds more than fifty percent (50%) (or the maximum ownership interest permitted by law) of the securities or other ownership interests representing the equity, voting stock or general partnership interest of a Party or (iii) any corporation or business entity of which a Party has the right to acquire, directly or indirectly, at least fifty percent (50%) of the securities or other ownership interests representing the equity, voting stock or general partnership interest thereof.

- 1.2. “Assignment(s)” shall mean the Assignments from the Inventors to CSRO of the Patent Assets dated October 16 and October 20, 1996 and filed with the United States Patent and Trademark Office on or about November 11, 1996 in the forms attached hereto as Exhibit 1.2.
- 1.3. “Business Day(s)” shall mean any day that is not a Saturday or a Sunday or a day on which the New York Stock Exchange is closed.
- 1.4. “Calendar Quarter” shall mean the respective periods of three (3) consecutive calendar months ending on March 31, June 30, September 30 and December 31.
- 1.5. “Calendar Year” shall mean each successive period of twelve (12) months commencing on January 1 and ending on December 31.
- 1.6. “Compound” shall mean the chemical compound known as 4-aminopyridine, as diagrammed on Schedule 1.6 hereto, and any other compounds disclosed, covered or included in the Patent Assets.
- 1.7. “CSRO Intellectual Property” shall mean the Patent Assets and Know-How.
- 1.8. “Know-How” shall mean all information and materials, including but not limited to, discoveries, information, Improvements, processes, formulas, data, inventions, know-how and trade secrets, patentable or otherwise, which
  - (a) relate to Compound or Product; and
  - (b) are owned by CSRO or are in CSRO’s possession or control and as to which CSRO has the right to license or sublicense to Third Parties.

Such know-how shall include, without limitation, all chemical, pharmaceutical, toxicological, preclinical, clinical, assay control, regulatory, and any other data or information used or useful for the development, manufacturing and/or regulatory approval of Compound or Product, including such rights which CSRO may have to data or information developed by Third Parties.

- 1.9. “Effective Date” shall mean the 1995 Agreement Effective Date.
- 1.10. “First Commercial Sale” shall mean the first sale of Product by ACORDA, its Affiliate or its sublicensees in a country, for end use or consumption, after all required Regulatory Approvals have been granted by the governing health authority of such country. Sales for

test marketing, clinical trial purposes or compassionate or similar use shall not be deemed to constitute a First Commercial Sale.

- 1.11. “GAAP” means United States generally accepted accounting principles, consistently applied.
- 1.12. “Improvement” shall mean any and all improvements and enhancements, patentable or otherwise, related to the Compound or Product including, without limitation, in the manufacture, formulation, ingredients, preparation, presentation, means of delivery or administration, dosage, indication, use or packaging of Compound or Product.
- 1.13. “Inventors” shall mean Robert R. Hansebout and Andrew R. Blight.
- 1.14. “Net Sales” shall mean the gross amount invoiced for commercial sales of Product in the Territory by ACORDA, its Affiliates or its sublicensees to Third Parties commencing upon the date of First Commercial Sale in any country in the Territory, after deducting, in accordance with GAAP, the following:

- (i) reasonable and customary trade, cash and quantity discounts and rebates;
- (ii) recalls, credits and allowances on account of returned or rejected Product, including allowance for breakage or spoilage;
- (iii) legally allowed chargebacks, rebates or similar payments granted to customers, including, but not limited to, managed health care organizations, wholesalers, distributors, buying groups, retailers, health care insurance carriers, pharmacy benefit management companies, health maintenance organizations or other institutions or health care organizations or to federal, state/provincial, local and other governments, their agencies and purchasers and reimbursers;
- (iv) sales or excise taxes, VAT or other taxes, and transportation, freight, shipping and insurance charges and additional special transportation, custom duties, and other governmental charges;
- (v) retroactive price reductions; and
- (vi) write-offs or allowances for bad debts.

Sales or other transfers between ACORDA and its Affiliates or sublicensees shall be excluded from the computation of Net Sales and no payments will be payable on such sales or transfers except where such Affiliates are end users, but Net Sales shall include the subsequent sales to Third Parties by such Affiliates or sublicensees.

- 1.15. “Party” shall mean CSRO or ACORDA.

- 1.16. “Patent Assets” shall mean the patents and patent applications which as of the Effective Date or at any time during the term of this Agreement
- (a) are owned or controlled by CSRO or which CSRO through license or otherwise has or acquires rights from a Third Party, and
  - (b) relate to Compound, Product or any Improvement, including but not limited to methods of their development, manufacture, use, or otherwise relate to Know-How, including all certificates of invention and applications for certificates of invention, substitutions, divisions, continuations, continuations-in-part, patents issuing thereon or reissues or reexaminations or extensions thereof and any and all foreign patents and patent applications corresponding thereto, supplementary protection certificates or the like of any such patents and current and future patent applications, including but not limited to the patents and patent applications listed on Schedule 1.16 hereto and the patents and patent applications included in the definition of Patent Rights under the Inter-Institutional Agreement, and any counterparts thereof which have been or may be filed in other countries.
- 1.17. “Product” shall mean any product in final form for commercial sale (or, where the context so indicates, the product being tested in clinical trials), which contains Compound as at least one of the therapeutically active ingredients in all dosage forms and package configurations for any indication.
- 1.18. “Proprietary Information” shall mean any and all scientific, clinical, regulatory, marketing, financial and commercial information or data, whether communicated in writing, orally or by any other means, which is owned and under the protection of one Party and is being provided by that Party to the other Party in connection with this Agreement.
- 1.19. “Regulatory Approval” means all approvals (including pricing and reimbursement approvals required for marketing authorization), product and/or establishment licenses, registrations or authorizations of all regional, federal, state or local regulatory agencies, departments, bureaus or other governmental entities, necessary for the manufacture, use, storage, import, export, transport and sale of Product in a regulatory jurisdiction.
- 1.20. “Royalty Year” shall mean, (i) for the year in which the First Commercial Sale occurs (the “First Royalty Year”), the period commencing with the first day of the Calendar Quarter in which the First Commercial Sale occurs and expiring on the last day of the Calendar Year in which the First Commercial Sale occurs and (ii) for each subsequent year, each successive Calendar Year.
- 1.21. “Territory” shall mean all of the countries in the world.
- 1.22. “Third Party(ies)” shall mean a person or entity who or which is neither a Party nor an Affiliate of a Party.

- 1.23. “Valid Claim” means a claim of an issued and unexpired patent included within the Patent Assets, which has not been revoked or held unenforceable or invalid by a decision of a court or other governmental agency of competent jurisdiction, and which has not been disclaimed, denied or admitted to be invalid or unenforceable through reissue or disclaimer or otherwise.

## **ARTICLE II** LICENSE; SUBLICENSES

- 2.1. License Grant . CSRO hereby grants to ACORDA an exclusive (even as to CSRO) license under the CSRO Intellectual Property, including the right to grant sublicenses, to develop, make, have made, use, import, offer for sale, market, commercialize, distribute and sell and otherwise dispose of Compound and Product in the Territory. CSRO reserves the right to practice the Patent Assets for its own internal research and educational purposes; provided, however, that such use is for non-commercial academic purposes only and for no other purpose.
- 2.2. Improvements by ACORDA. All rights and title to and interest in any Improvement developed or discovered by ACORDA in connection with the license granted under Section 2.1 above or ACORDA’s activities hereunder shall be vested solely in ACORDA.
- 2.3. a. Sublicenses. ACORDA shall have the right to grant sublicenses of the licenses granted to it under Section 2.1 of this Agreement to Affiliates or any Third Party. ACORDA shall advise CSRO, on a confidential basis, of any sublicense granted by it.

## **ARTICLE III** EXCHANGE OF INFORMATION; REGULATORY MATTERS

- 3.1. Exchange of Information . Throughout the term of this Agreement, and in addition to the other communications required under this Agreement, CSRO shall promptly disclose to ACORDA in writing on an ongoing basis all CSRO Intellectual Property related to the Compound or Product, and any and all additions or revisions thereto. ACORDA shall provide CSRO with an annual written report summarizing the status of ACORDA’s clinical development and regulatory activities with respect to Compound and Product by delivering to CSRO the summary of the annual report to the investigational new drug application relating to the use of Compound and Product submitted by ACORDA to the U.S. Food and Drug Administration in connection with the periodic reporting requirements of such investigational new drug application. Any disclosures contained in such reports shall be deemed Proprietary Information and shall remain the intellectual property of ACORDA.
- 3.2. Regulatory Matters.
- (a) ACORDA shall own, control and retain primary legal responsibility for the preparation, filing and prosecution of all filings and regulatory applications required to obtain Regulatory Approvals. ACORDA shall

promptly notify CSRO upon the receipt of Regulatory Approvals and of the date of First Commercial Sale.

- (b) Upon ACORDA's request, CSRO shall consult and cooperate with ACORDA in connection with obtaining Regulatory Approval of Product.

3.3. Trademark. ACORDA shall select, own and maintain trademarks for Product in the Territory.

#### **ARTICLE IV** **CONFIDENTIALITY AND PUBLICITY**

4.1. Non-Disclosure and Non-Use Obligations. All Proprietary Information and Know-how disclosed by one Party to the other Party hereunder shall be maintained in confidence and shall not be disclosed to any Third Party or used for any purpose except as expressly permitted herein without the prior written consent of the Party that disclosed the Proprietary Information to the other Party during the term of this Agreement. The foregoing non-disclosure and non-use obligations shall not apply to the extent that such Proprietary Information:

- (a) is known by the receiving Party at the time of its receipt, and not through a prior disclosure by the disclosing Party, as documented by business records;
- (b) is or becomes properly in the public domain or knowledge;
- (c) is subsequently disclosed to a receiving Party by a Third Party who may lawfully do so and is not under an obligation of confidentiality to the disclosing Party; or
- (d) is developed by the receiving Party independently of Proprietary Information received from the other Party, as documented by research and development records.

4.2. Permitted Disclosure of Proprietary Information. Notwithstanding Section 4.1, a Party receiving Proprietary Information of another Party may disclose such Proprietary Information:

- (a) to governmental or other regulatory agencies in order to obtain patents pursuant to this Agreement, or to gain approval to conduct clinical trials or to market Product, but such disclosure may be only to the extent reasonably necessary to obtain such patents or authorizations
- (b) by ACORDA or its agents, consultants, Affiliates, sublicensees and/or other Third Parties for the research and development, manufacturing and/or marketing of the Compound and/or Product (or for such parties to determine their interests in performing such activities) on the condition

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

that such Third Parties agree to be bound by the confidentiality obligations consistent with this Agreement; or

- (c) if required to be disclosed by law or court order, provided that notice is promptly delivered to the non-disclosing Party in order to provide an opportunity to challenge or limit the disclosure obligations.

4.3. Publication. In the event CSRO or any Affiliate of or consultant to CSRO wishes to make a publication relating to Compound or Product, it shall deliver to ACORDA a copy of the proposed publication or an outline of the oral disclosure at least sixty (60) Business Days prior to submission or presentation, such that any issue of patent protection can be resolved in accordance with the terms of this Agreement.

4.4. Confidential Terms. Except as expressly provided herein, each Party agrees not to disclose any terms of this Agreement to any Third Party without the consent of the other party, except as required by securities or other applicable laws, to prospective investors to such party's accountants, attorneys and other professional advisors. Without limiting any of the foregoing, it is understood that ACORDA or its Affiliates may make disclosure of this Agreement and the terms hereof in any filings required by the Securities and Exchange Commission ("SEC") or any other governmental agency, may file this Agreement as an exhibit to any filing with the SEC or such agency and may distribute any such filing in the ordinary course of its business.

## ARTICLE V ROYALTIES AND REPORTS

5.1. Royalties.

5.1.1 Royalty Payments.

- (i) Subject to the terms and conditions of this Agreement, and in consideration of the rights granted by CSRO hereunder, ACORDA shall pay to CSRO royalties in an amount equal to [\*\*] of Net Sales in each country in the Territory where the manufacture, use or sale of Product would, absent the license granted hereunder, infringe one or more Valid Claims in such country.
- (ii) Royalties on Net Sales at the rate set forth in (i) above shall accrue as of the date of First Commercial Sale of Product in the applicable country and shall continue and accrue on Net Sales on a country-by-country basis until the earlier of (A) the expiration of the last to expire Patent Asset in such country or (B) ten (10) years following the date of First Commercial Sale of Product in such country. Thereafter, ACORDA shall be relieved of any royalty payment under this Agreement.
- (iii) The payment of royalties set forth above shall be subject to the following conditions:

- (A) only one payment shall be due with respect to the same unit of Product;
  - (B) no multiple royalties shall be payable because any Product, or its manufacture, sale or use is covered by more than one Valid Claim;
  - (C) no royalties shall accrue on the disposition of Product by ACORDA, Affiliates or sublicensees as samples (promotion or otherwise) or as donations (for example, to non-profit institutions or government agencies) or to clinical trials or for research and and/or development; and
  - (D) CSRO shall be responsible for payment of any royalties or other obligations owed by CSRO to any Third Party, including without limitation, pursuant to the Inter-Institutional Agreement.
- 5.1.2 Affiliate and Sublicensee Sales. In the event that ACORDA transfers Compound or Product to one of its Affiliates or sublicensees, there shall be no royalty due at the time of transfer. Subsequent sales of Product by the Affiliates or sublicensees to Third Parties such as patients, hospitals, medical institutions, health plans or funds, wholesalers (which are not sublicensees), pharmacies or other retailers, shall be reported as Net Sales hereunder.
- 5.1.3 Compulsory Licenses. If a compulsory license is granted to a Third Party with respect to Product in any country in the Territory with a royalty rate lower than the royalty rate provided by Section 5.1.1, then the royalty rate to be paid by ACORDA on Net Sales in that country under Section 5.1.1 shall be reduced to the rate paid by the compulsory Third Party licensee.
- 5.1.4 Combination Product. Notwithstanding the provisions of Section 5.1.1, in the event a Product is sold as a combination product with other biologically active components, Net Sales, for purposes of royalty payments on the combination product, shall be calculated by multiplying the Net Sales of that combination product by the fraction A/B, where A is the gross selling price of the Product sold separately and B is the gross selling price of the combination product. If no such separate sales are made by ACORDA or its Affiliates or sublicensees, Net Sales for royalty determination shall be calculated by multiplying Net Sales of the combination product by the fraction C/(C+D), where C (excluding the fully allocated cost of the other biologically active component in question) is the fully allocated cost of the Compound and D is the fully allocated cost of such other biologically active components.
- 5.2. Reports; Payment of Royalty. During the term of the Agreement for so long as royalty payments are due, ACORDA shall furnish to CSRO a written report for each Calendar Quarter showing the Net Sales of all Products subject to royalty payments during the

reporting period and the royalties payable to CSRO under this Agreement. Reports shall be due on the forty-fifth (45<sup>th</sup>) day following the close of each Calendar Quarter. Royalties shown to have accrued by each royalty report, if any, shall be due and payable on the date such report is due. ACORDA shall keep complete and accurate records in sufficient detail to enable the royalties hereunder to be determined. ACORDA shall retain such records for twenty-four (24) months after the submission of the corresponding report.

- 5.3. **Audits.** Upon the written request of CSRO and not more than once during the twelve (12) month period next following the expiration of each Royalty Year during the term of the Agreement, ACORDA shall, at CSRO's expense, permit an independent certified public accounting firm selected by CSRO and reasonably acceptable to ACORDA to have access during normal business hours, upon thirty (30) days prior notice to ACORDA, to such of the records of ACORDA as may be reasonably necessary to verify the accuracy of the royalty reports hereunder for any Royalty Year ending not more than twenty-four (24) months prior to the date of such request. The accounting firm shall disclose to CSRO only whether the royalty reports are correct or incorrect and the specific details concerning any discrepancies. This Section 5.3 shall survive the expiration or termination of this Agreement for a period of two years.
- 5.3.1 If such accounting firm concludes that additional royalties were owed during such period, ACORDA shall promptly pay the additional royalties within sixty (60) days of the date CSRO delivers to ACORDA such accounting firm's written report so concluding; provided however, that, in the event that ACORDA shall not be in agreement with the conclusion of such report (a) ACORDA shall not be required to pay such additional royalties and (b) such matter shall be resolved pursuant to the provisions of Section 10.7 herein. In the event such accounting firm concludes that amounts were overpaid by ACORDA during such period, CSRO shall repay ACORDA the amount of such overpayment within sixty (60) days of the date CSRO delivers to ACORDA such accounting firm's written report so concluding, provided, however, that, in the event that CSRO shall not be in agreement with the conclusion of such report (a) CSRO shall not be required to repay such overpayment and (b) such matter shall be resolved pursuant to the provisions of Section 10.7 herein. The fees charged by such accounting firm shall be paid by CSRO; provided, however, that if an error in favor of CSRO of more than the greater of (i) \$100,000 or (ii) ten percent (10%) of the royalties due hereunder for the period being reviewed is discovered, then the fees and expenses of the accounting firm shall be paid by ACORDA. Payments of additional royalties under this Section 5.3.1 shall be made with interest from the date such amounts were due, at the prime rate reported by Chase Manhattan Bank, New York, New York.
- 5.3.2 Upon the expiration of twenty-four (24) months following the end of any Royalty Year the calculation of royalties payable with respect to such year shall be binding and conclusive upon CSRO, and ACORDA shall be released from any liability or accountability with respect to royalties for such year.

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

5.3.3 CSRO shall treat all financial information subject to review under this Section 5.3. in accordance with the confidentiality provisions of this Agreement.

5.4. Payment Exchange Rate. All payments to CSRO under this Agreement shall be made in United States dollars. In the case of sales outside the United States, the rate of exchange to be used in computing Net Sales shall be calculated monthly in accordance with the conversion rates published in the Wall Street Journal, Eastern edition (if available).

5.5. Tax Withholding. If laws, rules or regulations require withholding of income taxes or other taxes imposed upon payments set forth in this Article V, CSRO shall provide ACORDA, prior to any such payment, annually or more frequently if required, with all forms or documentation required by any applicable taxation laws, treaties or agreements to such withholding or as necessary to claim a benefit thereunder (including, but not limited to Form W-8BEN or any successor forms) and ACORDA shall make such withholding payments as required and subtract such withholding payments from the payments set forth in this Article V. ACORDA will use commercially reasonable efforts consistent with its usual business practices and cooperate with CSRO to ensure that any withholding taxes imposed are reduced as far as possible under the provisions of the current or any future taxation treaties or agreements between foreign countries.

5.6. Exchange Controls. Notwithstanding any other provision of this Agreement, if at any time legal restrictions prevent the prompt remittance of part or all of the royalties with respect to Net Sales in any country, payment shall be made through such lawful means or methods as ACORDA may determine. When in any country the law or regulations prohibit both the transmittal and deposit of royalties on sales in such a country, royalty payments shall be suspended for as long as such prohibition is in effect (and such suspended payments shall not accrue interest), and promptly after such prohibition ceases to be in effect, all royalties or other payments that ACORDA or its Affiliates would have been obligated to transmit or deposit, but for the prohibition, shall be deposited or transmitted, as the case may be, to the extent allowable (with any interest earned on such suspended royalties which were placed in an interest-bearing bank account in that country, less any transactional costs). If the royalty rate specified in this Agreement should exceed the permissible rate established in any country, the royalty rate for sales in such country shall be adjusted to the highest legally permissible or government-approved rate.

5.7. Other Payments. The parties hereto acknowledge that, in further consideration of the rights granted by CSRO hereunder, ACORDA had issued to CSRO on the Effective Date warrants, dated August 9, 1995, to purchase up to an aggregate of [\*\*] shares of common stock of ACORDA which warrants have since been exercised in full.

## ARTICLE VI REPRESENTATIONS AND WARRANTIES

6.1. CSRO Representations and Warranties. CSRO represents and warrants to ACORDA that as of the Restatement Date:

- (a) this Agreement has been duly executed and delivered by CSRO and constitutes legal, valid, and binding obligations enforceable against CSRO in accordance with its terms;
- (b) no approval, authorization, consent, or other order or action of or filing with any court, administrative agency or other governmental authority is required for the execution and delivery by CSRO of this Agreement or the consummation by CSRO of the transactions contemplated hereby;
- (c) CSRO has the full corporate power and authority to enter into and deliver this Agreement, to perform and to grant the licenses granted under Article II hereof and to consummate the transactions contemplated hereby; all corporate acts and other proceedings required to be taken to authorize such execution, delivery, and consummation have been duly and properly taken and obtained;
- (d) the issued patents included in the Patent Assets are valid and enforceable over any references or prior art known to CSRO or its agents, taken alone or in combination;
- (e) CSRO has not previously assigned, transferred, conveyed or otherwise encumbered its right, title and interest in the CSRO Intellectual Property or entered into any agreement with any Third Party which is in conflict with the rights granted to ACORDA pursuant to this Agreement;
- (f) CSRO is the sole owner of the CSRO Intellectual Property, all of which is free and clear of any security interests, liens, charges, encumbrances or restrictions on license, and no other person, corporate or other private entity, or governmental or university entity or subdivision thereof, including without limitation, McMaster or Purdue, has any claim of ownership with respect to the CSRO Intellectual Property, whatsoever; the Assignments are valid and in full force and effect as of the Restatement Date and CSRO is not aware of any claims challenging the validity of the Assignments;
- (g) CSRO has disclosed to ACORDA the complete texts of all Patent Assets as well as all information received by CSRO concerning the institution or possible institution of any interference, opposition, re-examination, reissue, revocation, nullification, or any official proceeding involving a Patent Asset, and that it will continue such disclosure with respect to new events during the term of the Agreement;
- (h) CSRO has the sole and exclusive authority to grant the rights and licenses granted under Article II and CSRO has not previously granted, and will not grant, or engage in any discussions to grant, during the term of this Agreement, any right, license or interest in and to the CSRO Intellectual

Property, or any portion thereof, inconsistent with the license granted to ACORDA herein;

- (i) Schedule 1.16 is a complete and accurate list of all patents and patent applications in the Territory relating to Compound or Product owned by CSRO or to which CSRO has the right to license;
- (j) there are no claims, judgments or settlements against or owed by CSRO or pending or, to the best of its knowledge, threatened claims or litigation relating to the Patent Assets;
- (k) CSRO has disclosed to ACORDA all relevant information known by it regarding the CSRO Intellectual Property reasonably related to the activities contemplated under this Agreement;
- (l) no contract research organization, corporation, business entity or individual which have been involved in any studies conducted for the purpose of obtaining regulatory approvals have been debarred individuals or entities within the meaning of 21 U.S.C. section 335(a) or (b);
- (m) in connection with development of Compound and Product, CSRO has complied in all material respects with applicable U.S. laws and regulations;
- (n) CSRO has not entered into any contracts, agreements and other arrangements with any Third Parties relating to the research, development or commercialization of the Compound or Product; and
- (o) Attached as Exhibit 6.1(o) is a true and complete copy of the Inter-Institutional Agreement, including all supplements thereto and modifications or amendments thereof. CSRO is not, and to the best of its knowledge, neither Purdue or McMaster is, in default under or in breach of any terms or provisions of the Inter-Institutional Agreement and such agreement is in full force and effect as of the date hereof. During the term of this Agreement, CSRO shall not amend, modify, terminate or cause a default under the Inter-Institutional Agreement. In the event that CSRO receives notice from either Purdue or McMaster or any other Third Party that CSRO has committed a breach of its obligations under the Inter-Institutional Agreement, or if CSRO anticipates such breach, or any other claim that may give rise to a right by any Third Party to terminate or otherwise diminish CSRO's rights to the Patent Assets and/or otherwise diminish CSRO's ability to perform its obligations under this Agreement, CSRO shall immediately notify ACORDA of such situation, and CSRO shall promptly cure such breach. However, if CSRO is unable to cure such breach, CSRO shall, to the extent possible, permit ACORDA to cure such breach and to negotiate directly with Purdue or McMaster or any other such Third Party.

6.2. ACORDA Representations and Warranties. ACORDA represents and warrants to CSRO that as of the Effective Date and the Restatement Date:

- (a) this Agreement has been duly executed and delivered by it and constitutes legal, valid, and binding obligations enforceable against it in accordance with its terms;
- (b) it has full corporate power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby. All corporate acts and other proceedings required to be taken to authorize such execution, delivery, and consummation have been duly and properly taken and obtained; and
- (c) no approval, authorization, consent, or other order or action of or filing with any court, administrative agency or other governmental authority is required for the execution and delivery by it of this Agreement or the consummation by it of the transactions contemplated hereby.

## ARTICLE VII PATENT MATTERS

7.1. Filing, Prosecution and Maintenance of Patent Applications or Patents. ACORDA shall file, prosecute and maintain the Patent Assets in CSRO's name and shall be responsible for the payment of all patent prosecution and maintenance costs. Upon ACORDA's request, CSRO shall reasonably cooperate in the filing, prosecution or maintenance of such patent application or patent. If ACORDA elects not to file, prosecute or maintain a patent application or patent included in the Patent Assets, it shall provide CSRO with written advance notice sufficient to avoid any loss or forfeiture, and CSRO shall have the right, but not the obligation, at its sole expense, to file, prosecute or maintain such patent application or patent in CSRO's name. Thereafter, ACORDA's royalty obligations related to that Patent Asset shall terminate and such patent or patent application shall no longer be deemed a Patent Asset. The responsible Party under this Section 7.1 shall solicit the other Party's review of the nature and text of such patent applications and important prosecution matters related thereto in reasonably sufficient time prior to filing thereof, and the responsible Party shall take into account the other Party's reasonable comments related thereto. ACORDA shall inform CSRO of any significant developments in the prosecution of pending patent applications included in the Patent Assets, including the issuance of any final office actions, allowance of claims, or grant of any domestic or foreign patent based thereon.

7.2. Patent Office Proceedings. Each Party shall inform the other Party of any request for, filing, or declaration of any proceeding before a patent office seeking to protest, oppose, cancel, reexamine, declare an interference proceeding, initiate a conflicts proceeding, or analogous process involving a patent application or patent included in the Patent Assets. ACORDA shall have the option to conduct any such proceedings relating to the Patent Assets, and may offset any expenses incurred therein against royalties due to CSRO

under this Agreement. Each Party thereafter shall cooperate with the other with respect to any such patent office proceedings.

### 7.3. Enforcement and Defense.

- (a) Each Party shall promptly give the other Party notice of any infringement in the Territory of any patent application or patent included in the Patent Assets that comes to such Party's attention. The Parties will thereafter consult and cooperate fully to determine a course of action, including, without limitation, the commencement of legal action by any Party. However, ACORDA shall have the first right to initiate and prosecute such legal action and in the name of CSRO and ACORDA, or to control the defense of any declaratory judgment action relating to Patent Assets. The initiation and prosecution of such legal action will be at ACORDA's expense; provided, however, that ACORDA shall be entitled to offset fifty percent (50%) of amounts expended in connection with such action against royalties due to CSRO under this Agreement. ACORDA shall promptly inform CSRO if ACORDA elects not to exercise such first right, and CSRO thereafter shall have the right either to initiate and prosecute such action or to control the defense of such declaratory judgment action in the name of CSRO and, if necessary, ACORDA. In no event shall ACORDA be obligated to enforce or defend any of the Patent Assets.
- (b) If ACORDA elects not to initiate and prosecute an infringement or defend a declaratory judgment action in any country in the Territory as provided in Subsection 7.3 (a), and CSRO elects to do so, the cost of any agreed-upon course of action, including the costs of any legal action commenced or any declaratory judgment action defended, shall be borne solely by CSRO.
- (c) For any such legal action or defense, in the event that any Party is unable to initiate, prosecute, or defend such action solely in its own name, the other Party will join such action voluntarily and will execute all documents necessary for the Party to prosecute, defend and maintain such action. In connection with any such action, the Parties will cooperate and will provide each other with any information or assistance that either reasonably may request.
- (d) Any recovery obtained by ACORDA or CSRO shall be shared as follows:
  - (i) the Party that initiated and prosecuted, or maintained the defense of, the action shall recoup all of its costs and expenses (including reasonable attorneys' fees) incurred in connection with the action, whether the recovery is by settlement or otherwise;

- (ii) the other Party then shall, to the extent possible, recover its costs and expenses (including reasonable attorneys' fees) incurred in connection with the action;
  - (iii) if CSRO initiated and prosecuted, or maintained the defense of, the action, the amount of any recovery remaining then shall be retained by CSRO; and
  - (iv) if ACORDA initiated and prosecuted, or maintained the defense of, the action, the amount of any recovery remaining shall be retained by ACORDA, except that CSRO shall receive a portion equivalent to the royalties it would have received in accordance with the terms of this Agreement if such amount were deemed Net Sales.
- (e) If the practice by ACORDA of the license granted herein results in any allegation or claim of infringement of an intellectual property right of a Third Party against ACORDA, ACORDA shall have the exclusive right but not the obligation to defend such claim, suit or authority to settle such suit; provided, however, CSRO shall cooperate with ACORDA's reasonable request, in connection with the defense of such claim or suit. ACORDA shall be entitled to offset any amounts expended in connection with such proceeding, including attorneys' fees and professional fees, against any royalties it would otherwise owe CSRO under this Agreement, up to a maximum of fifty percent (50%) of the royalties due.
- (f) CSRO shall inform ACORDA of any certification regarding any Patent Assets it has received pursuant to either 21 U.S.C. §§ 355(b)(2)(A)(iv) or (j)(2)(A)(vii)(IV) or under Canada's Patented Medicines (Notice of Compliance) Regulations Article 5 and shall provide ACORDA with a copy of such certification within five (5) days of receipt. CSRO's and ACORDA's rights with respect to the initiation and prosecution, or defense, of any legal action as a result of such certification or any recovery obtained as a result of such legal action shall be allocated as defined in Subsections 7.3(d) (i) through (iv); provided, however, that ACORDA shall exercise the first right to initiate and prosecute, or defend, any action and shall inform CSRO of such decision within fifteen (15) days of receipt of the certification, after which time, if ACORDA has not advised CSRO of its intention to initiate and prosecute, or defend, such action, CSRO shall have the right to initiate and prosecute, or defend, such action.

7.4. **Patent Term Extensions or Restorations and Supplemental Protection Certificates.** The Parties shall cooperate with each other in obtaining patent term extensions or restorations or supplemental protection certificates or their equivalents in any country in the Territory where applicable and where desired by ACORDA. If elections with respect to obtaining such extension or supplemental protection certificates are to be made, ACORDA shall have the right to make the election and CSRO shall abide by such election. CSRO shall

notify ACORDA of (a) the issuance of each U.S. patent included within the Patent Assets, giving the date of issue and patent number for each such patent, and (b) each notice pertaining to any patent included within the Patent Assets pursuant to the United States Drug Price Competition and Patent Term Restoration Act of 1984 (hereinafter called the “1984 Act”), including notices pursuant to §§ 101 and 103 of the 1984 Act from persons who have filed an abbreviated new drug application (“ANDA”). Such notices shall be given promptly, but in any event within five (5) calendar days of each such patent’s date of issue or receipt of each such notice pursuant to the 1984 Act, whichever is applicable. The Party responsible for filing shall notify the other Party of each filing for patent term extension or restoration under the 1984 Act, any allegations of failure to show due diligence and all awards of patent term restoration (extensions) with respect to the Patent Assets. Likewise, the responsible Party shall inform the other Party of patent extensions in the rest of the world regarding any Product.

## **ARTICLE VIII** **INDEMNIFICATION**

- 8.1. **ACORDA Indemnification.** ACORDA shall indemnify, defend and hold CSRO harmless from and against any and all liabilities, damages, losses, costs or expenses (including reasonable attorney’s and professional fees and other expenses of litigation and/or arbitration) (collectively, “Losses”) resulting from (i) a claim, suit or proceeding brought by a Third Party against CSRO, arising from, or occurring as a result of, activities performed by ACORDA or its sublicensees in connection with the use, development, manufacture or sale of any Product or Compound, except to the extent caused by the negligence or willful misconduct of CSRO; or (ii) a breach of ACORDA’s representations and warranties contained in Article VI. CSRO shall promptly notify ACORDA of any Loss for which CSRO intends to claim such indemnification, and cooperate fully with ACORDA in the investigation, conduct and defense of any claim covered by this Section 8.1 and provide full information with respect thereto.
- 8.2. **CSRO Indemnification.** CSRO shall indemnify, defend and hold ACORDA harmless from and against any and all Losses resulting from the negligence or willful misconduct of CSRO or a breach of CSRO’s representations and warranties contained in Article VI. ACORDA shall promptly notify CSRO of any Loss for which CSRO intends to claim such indemnification, and cooperate fully with ACORDA in the investigation, conduct and defense of any claim covered by this Section 8.2 and provide full information with respect thereto.

## **ARTICLE IX** **TERM AND TERMINATION**

- 9.1. **Term and Expiration.** This Agreement shall be effective as of the Effective Date and unless terminated earlier pursuant to Section 9.2 and 9.3 below, the term of this Agreement shall continue in effect until expiration of all royalty or other payment obligations hereunder. Expiration of this Agreement shall not preclude ACORDA from continuing to make, use or sell Product in the Territory without further compensation to CSRO.

9.2. **Termination by Notice**. Notwithstanding anything contained herein to the contrary, ACORDA shall have the right to terminate this Agreement at any time by giving thirty (30) days advance written notice to CSRO. Except as set forth in this Agreement, in the event of such termination, (i) the rights and obligations hereunder, excluding any payment obligation that has accrued as of the termination date and excluding rights and obligations relating to confidentiality, shall terminate immediately, and (ii) the provisions of Section 9.4 shall be applicable.

9.3. **Termination**.

9.3.1. **Termination for Cause**. Either Party may terminate this Agreement by notice to the other Party at any time during the term of this Agreement as follows:

- (a) if the other Party is in breach of any material obligation hereunder by causes and reasons within its control, or has breached, in any material respect, any representations or warranties set forth in Article VI, and has not cured such breach within ninety (90) days after notice requesting cure of the breach, provided, however, that if the breach is not capable of being cured within ninety (90) days of such written notice, the Agreement may not be terminated so long as the breaching Party commences and is taking commercially reasonable actions to cure such breach as promptly as practicable; or
- (b) upon the filing or institution of bankruptcy, reorganization, liquidation or receivership proceedings, or upon an assignment of a substantial portion of the assets for the benefit of creditors by the other Party; provided, however, in the case of any involuntary bankruptcy, reorganization, liquidation, receivership or assignment proceeding such right to terminate shall only become effective if the Party consents to the involuntary proceeding or such proceeding is not dismissed within sixty (60) days after the filing thereof.

9.3.2. **Licensee Rights Not Affected**.

- (a) In the event ACORDA terminates this Agreement under Section 9.3.1(b), or this Agreement is otherwise terminated under Section 9.3.1(b), or CSRO is a debtor in a bankruptcy proceeding, whether voluntary or involuntary, all rights and licenses granted pursuant to this Agreement are, and shall otherwise be deemed to be, for purposes of Section 365(n) of 11 U.S.C. §101 et seq. (the “Bankruptcy Code”), licenses of rights to “intellectual property” as defined under Section 101(35A) of the Bankruptcy Code. The Parties agree that ACORDA and CSRO shall retain and may fully exercise all of their respective rights, remedies and elections under the Bankruptcy Code. The Parties further agree that, in the event of the commencement of a bankruptcy proceeding by or against CSRO under the Bankruptcy Code, ACORDA shall be entitled to all applicable rights under Section 365 of the Bankruptcy Code, including but

not limited to, entitled to a complete duplicate of (or complete access to, as appropriate) any such intellectual property and all embodiments of such intellectual property upon written request therefor by ACORDA.

- (b) In the event ACORDA is a debtor in a bankruptcy proceeding, whether voluntary or involuntary, all rights and licenses granted pursuant to this Agreement are, and shall otherwise be deemed to be, for purposes of Section 365 of the Bankruptcy Code, executory contracts. The Parties agree that applicable law does not excuse CSRO from accepting performance by, or rendering performance under this Agreement and all rights and licenses granted hereunder to, a person or entity other than ACORDA.

9.4. **Effect of Expiration or Termination.** Expiration or termination of this Agreement shall not relieve the Parties of any obligation accruing prior to such expiration or termination. ACORDA, its Affiliates and its sublicensees shall have the right to sell or otherwise dispose of the stock of any Product subject to this Agreement then on hand or in process of manufacture. In addition to any other provisions of this Agreement which by their terms continue after the expiration of this Agreement, the provisions of Article IV shall survive the expiration or termination of this Agreement and shall continue in effect for five (5) years from the date of expiration or termination and the provisions of Articles VIII and X shall survive the expiration or termination of this Agreement. Upon any termination of this Agreement, each party shall promptly return to the other party all Proprietary Information received from the other party (except one copy of which may be retained for archival purposes). In addition, any other provision required to interpret and enforce the Parties' rights and obligations under this Agreement shall also survive, but only to the extent required for the full observation and performance of this Agreement. Any expiration or early termination of this Agreement shall be without prejudice to the rights of any Party against the other accrued or accruing under this Agreement prior to termination. Except as expressly set forth herein, the rights to terminate as set forth herein shall be in addition to all other rights and remedies available under this Agreement, at law, or in equity, or otherwise.

## **ARTICLE X**

### MISCELLANEOUS

- 10.1. **Right to Develop Independently.** Nothing in this Agreement will impair ACORDA's right to independently acquire, license, develop, or have others develop for it, similar technology performing similar functions to the Products or to market and distribute products based on other technology.
- 10.2. **Force Majeure.** Neither Party shall be held liable or responsible to the other Party nor be deemed to have defaulted under or breached the Agreement for failure or delay in fulfilling or performing any term of the Agreement during the period of time when such failure or delay is caused by or results from causes beyond the reasonable control of the affected Party including, but not limited to, fire, flood, embargo, war, acts of war

(whether war be declared or not), insurrection, riot, civil commotion, strike, lockout or other labor disturbance, act of God or act, omission or delay in acting by any governmental authority or the other Party. The affected Party shall notify the other Party of such force majeure circumstances as soon as reasonably practicable.

10.3. Assignment. The Agreement may not be assigned or otherwise transferred without the prior written consent of the other Party; provided, however, that ACORDA may assign this Agreement to an Affiliate or in connection with the transfer or sale of its business or all or substantially all of its assets related to Compound or Product or in the event of a merger, consolidation, change in control or similar corporate transaction. Any permitted assignee shall assume all obligations of its assignor under this Agreement.

10.4. Severability. In the event that any of the provisions contained in this Agreement are held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby, unless the absence of the invalidated provision(s) adversely affect the substantive rights of the Parties. In such event, the Parties shall replace the invalid, illegal or unenforceable provision(s) with valid, legal and enforceable provision(s) which, insofar as practical, implement the purposes of this Agreement.

10.5. Notices. All notices or other communications which are required or permitted hereunder shall be in writing and sufficient if delivered personally, sent by facsimile (and promptly confirmed by personal delivery, registered or certified mail or overnight courier), sent by nationally-recognized overnight courier or sent by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

if to ACORDA to:

ACORDA THERAPEUTICS, INC.  
16 Skyline Drive  
Hawthorne, New York 10532  
Attention: Ron Cohen  
Fax No.: (914) 347-4560

if to CSRO to:

CANADIAN SPINAL RESEARCH ORGANIZATION  
120 Newkirk Road, Unit 2  
Richmond Hill, Ontario L4C 9S7  
Attention: Barry Munro  
Fax No.: (905) 508-4002

or to such other address as the Party to whom notice is to be given may have furnished to the other Parties in writing in accordance herewith. Any such communication shall be deemed to have been given when delivered if personally delivered or sent by facsimile on a Business Day, upon confirmed delivery by nationally-recognized overnight courier if so

delivered and on the third Business Day following the date of mailing if sent by registered or certified mail.

- 10.6. Applicable Law. The Agreement shall be governed by and construed in accordance with the laws of the United States of America and State of New York without reference to any rules of conflict of laws.
- 10.7. Dispute Resolution.

- (a) The Parties agree to attempt initially to solve all claims, disputes, or controversies arising under, out of, or in connection with this Agreement (a “Dispute”) by conducting good faith negotiations. Any Disputes which cannot be resolved by good faith negotiation within twenty (20) Business Days, shall be referred, by written notice from either Party to the other, to the Chief Executive Officer of each Party. Such Chief Executive Officers shall negotiate in good faith to achieve a resolution of the Dispute referred to them within twenty (20) Business Days after such notice is received by the Party to whom the notice was sent. If the Chief Executive Officers are unable to settle the Dispute between themselves within twenty (20) Business Days, they shall so report to the Parties in writing. The Dispute shall then be referred to mediation as set forth in the following subsection
- (b) Upon the Parties receiving the Chief Executive Officers’ report that the Dispute referred to them pursuant to subsection (a) has not been resolved, the Dispute shall be referred to mediation by written notice from either Party to the other. The mediation shall be conducted pursuant to the American Arbitration Association (“AAA”) procedures. The place of the mediation shall be New York, New York. If the Parties have not reached a settlement within twenty (20) Business Days of the date of the notice of mediation, the Dispute shall be referred to arbitration pursuant to subsection (c) below.
- (c) If after the procedures set forth in subsections (a) and (b) above, the Dispute has not been resolved, a Party shall decide to institute arbitration proceedings, it shall give written notice to that effect to the other Party. The Parties shall refrain from instituting the arbitration proceedings for a period of sixty (60) days following such notice. During such period, the Parties shall continue to make good faith efforts to amicably resolve the dispute without arbitration. If the Parties have not reached a settlement during that period the arbitration proceedings shall go forward and be governed by the AAA rules then in force. Each such arbitration shall be conducted by a panel of three arbitrators: one arbitrator shall be appointed by each of ACORDA and CSRO and the third arbitrator, who shall be the Chairman of the tribunal, shall be appointed by the two-Party appointed arbitrators. Any such arbitration shall be held in New York, New York, USA.

(d) The arbitrators shall have the authority to direct the Parties as to the manner in which the Parties shall resolve the disputed issues, to render a final decision with respect to such disputed issues, or to grant specific performance with respect to any such disputed issue. Judgment upon the award so rendered may be entered in any court having jurisdiction or application may be made to such court for judicial acceptance of any award and an order of enforcement, as the case may be. Nothing in this Section shall be construed to preclude either Party from seeking provisional remedies, including but not limited to, temporary restraining orders and preliminary injunctions, from any court of competent jurisdiction, in order to protect its rights pending arbitration, but such preliminary relief shall not be sought as a means of avoiding arbitration. In no event shall a demand for arbitration be made after the date when institution of a legal or equitable proceeding based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations. Each Party shall bear its own costs and expenses incurred in connection with any arbitration proceeding and the Parties shall equally share the cost of the mediation and arbitration levied by the AAA.

Any mediation or arbitration proceeding entered into pursuant to this Section 10.6 shall be conducted in the English language. Subject to the foregoing, for purposes of this Agreement, each Party consents, for itself and its Affiliates, to the jurisdiction of the courts of the State of New York, county of New York and the U.S. District Court for the Southern District of New York.

- 10.8. Entire Agreement. This Agreement contains the entire understanding of the Parties with respect to the subject matter hereof and supersedes all previous writings and understandings, including without limitation, the 1995 Agreement. The Parties agree that the 1995 Agreement is hereby terminated, and notwithstanding anything contained therein to the contrary, is of no further force or effect. This Agreement may be amended, or any term hereof modified, only by a written instrument duly executed by all Parties hereto.
- 10.9. Independent Contractors. It is expressly agreed that the Parties shall be independent contractors and that the relationship between the Parties shall not constitute a partnership, joint venture or agency. Neither Party shall have the authority to make any statements, representations or commitments of any kind, or to take any action, which shall be binding on the other Party, without the prior consent of such other Party.
- 10.10. Waiver. The waiver by a Party hereto of any right hereunder or the failure to perform or of a breach by another Party shall not be deemed a waiver of any other right hereunder or of any other breach or failure by said other Party whether of a similar nature or otherwise.
- 10.11. Further Assurances. At any time or from time to time on and after the Effective Date, CSRO shall at the request of ACORDA (i) deliver to ACORDA such records, data or other documents consistent with the provisions of this Agreement, (ii) execute, and deliver or cause to be delivered, all such consents, documents or further instruments of

transfer or license, and (iii) take or cause to be taken all such actions as ACORDA may reasonably deem necessary or desirable in order for ACORDA to obtain the full benefits of this Agreement and the transactions contemplated hereby.

- 10.12. Headings. The captions to the several Articles and Sections hereof are not a part of the Agreement, but are merely guides or labels to assist in locating and reading the several Articles and Sections hereof.
- 10.13. Counterparts. The Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- 10.14. Use of Names Except as otherwise provided in this Agreement, neither Party shall use the name of the other Party in relation to this transaction in any public announcement, press release or other public document without the consent of such other Party, which consent shall not be unreasonably withheld or delayed; provided, however, that either Party may use the name of the other Party in any document required to be filed to obtain Regulatory Approval or to comply with applicable laws, rules or regulations.
- 10.15. LIMITATION OF LIABILITY. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL OR INDIRECT DAMAGES ARISING OUT OF THIS AGREEMENT, HOWEVER CAUSED, UNDER ANY THEORY OF LIABILITY.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above.

**CANADIAN SPINAL RESEARCH ORGANIZATION**

By: /s/ Barry Munro  
Name: Barry Munro  
Title: President

**A CORDA THERAPEUTICS, INC.**

By: /s/ Harold Safferstein  
Name: Harold Safferstein  
Title: VP of Business Development

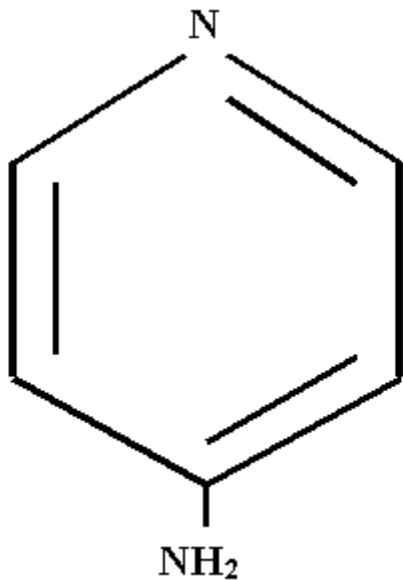
**EXHIBIT 1.2**

**ASSIGNMENTS**

**SCHEDULE 1.6**

**DIAGRAM OF 4-AP**

4-aminopyridine (“4-AP”), C<sub>5</sub>H<sub>6</sub>N<sub>2</sub>, MW 94



**SCHEDULE 1.16**  
**PATENT ASSETS**

**Case Number:**

**A01**

**Title:** USE OF 4-AMINOPYRIDINE IN THE REDUCTION OF CHRONIC PAIN AND SPASTICITY IN A SPINAL CORD INJURED PATIENT

**Inventor(s):**

Hansebout, Robert R.  
Blight, Andrew R

**Client:** Acorda Therapeutics Inc.

**Owner:** Canadian Spinal Research Organization

**Disclosure Status:** Filed

**Disclosure Date:**

**Attorney(s):** MF

Country	Sub Case	Case Type	Status	Application Number	Filing Date	Patent Number	Issue Date	Expiration Date
Australia		PCT	Granted	56911/94	20-Dec-1993	676251	06-Mar-1997	18-Dec-2012
Austria		PCT	Granted	1993094902578	20-Dec-1993	0241981	15-Jun-2003	20-Dec-2013
Bulgaria		PCT	Granted	99047	20-Dec-1993	62272	12-Nov-1998	20-Dec-2013
Canada		PCT	Pending	2085785	20-Dec-1993			18-Dec-2012
Czech Republic		ORD	Granted	PV2254-94	20-Dec-1993	284441	11-Nov-1998	20-Dec-2013
European Patent Convention		PCT	Granted	94902578.7	20-Dec-1993	0626848	04-Jun-2003	20-Dec-2013
France		EPC	Granted	94902578.7	20-Dec-1993	0626848	04-Jun-2003	20-Dec-2013
Germany, Federal Republic of		EPC	Granted	94902578.7	20-Dec-1993	69333014	04-Jun-2003	20-Dec-2013
Hungary		PCT	Granted	P94-02647	20-Dec-1993	219583	02-Aug-2001	20-Dec-2013
Ireland		EPC	Granted	94902578.7	20-Dec-1993	0626848	04-Jun-2003	20-Dec-2013
Italy		EPC	Granted	94902578.7	20-Dec-1993	0626848	04-Jun-2003	20-Dec-2013
Japan		PCT	Granted	6-514637	20-Dec-1993	8504772	21-May-1996	20-Dec-2013
Korea, Democratic People's Republic of		PCT	Granted	P-94-354	20-Dec-1993	31250	30-Aug-1997	20-Dec-2013
Korea, Republic of		PCT	Granted	94-702838	20-Dec-1993	10-301415	25-Jun-2001	20-Dec-2013
Liechtenstein		EPC	Granted	94902578.7	20-Dec-1993	0626848	04-Jun-2003	20-Dec-2013
Netherlands		EPC	Granted	94902578.7	20-Dec-1993	0626848	04-Jun-2003	20-Dec-2013
New Zealand		PCT	Granted	258844	20-Dec-1993	258844	09-Oct-2000	20-Dec-2013
Norway		PCT	Granted	1994 3049	20-Dec-1993	308.644	09-Oct-2000	20-Dec-2013
Russian Federation		PCT	Granted	94041207.00	20-Dec-1993	2160590	20-Oct-2000	20-Dec-2013
Singapore		PCT	Granted	9705418-3	19-Apr-1996	48615	20-Jul-1999	19-Apr-2016
Slovakia		PCT	Granted	PV-0969-94	20-Dec-1993	280922	24-May-2000	20-Dec-2013
Spain		EPC	Granted	94902578.7	20-Dec-1993	0626848	04-Jun-2003	20-Dec-2013
Sweden		EPC	Granted	94902578.7	20-Dec-1993	0626848	04-Jun-2003	20-Dec-2013
United Kingdom		EPC	Granted	94902578.7	20-Dec-1993	0626848	04-Jun-2003	20-Dec-2013
United States of America		ORD	Granted	08/290757	13-Sep-1994	5545648	13-Aug-1996	13-Sep-2014

**Abstract:** A method of reducing chronic pain and spasticity in a spinal cord injured patient in need of such treatment comprising administering an effective amount of 4-aminopyridine to said patient.

**EXHIBIT 6.1(o)**

**INTER-INSTITUTIONAL AGREEMENT**

**Exhibit 10.15**

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

**LICENSE AGREEMENT**

**THIS LICENSE AGREEMENT** (the “**Agreement**”) is made and entered into as of this 3rd day of February, 2003 (the “**Effective Date**”) by and between **ACORDA THERAPEUTICS, INC.**, a corporation organized and existing under the laws of the state of Delaware having a principal place of business at 15 Skyline Drive, Hawthorne, New York 10532 (“**Acorda**”) and **CORNELL RESEARCH FOUNDATION, INC.**, a non-profit corporation organized and existing under the laws of the state of New York having an office at 20 Thornwood Drive, Suite 105, Ithaca, NY 14850 (“**Foundation**”). Each of Acorda and Foundation may be referred to herein individually as a “**Party**” and collectively, as “**Parties**.”

**RECITALS**

**WHEREAS**, Foundation owns all right, title and interest in U.S. Patent No. 5,952,357; and

**WHEREAS**, Foundation is a wholly owned subsidiary of Cornell University (“Cornell”) and holds the ownership interests of patents, know-how, and biological materials made by Cornell’s employees and administers licenses in a manner consistent with the policies of Cornell; and

**WHEREAS**, Acorda desires to obtain and Foundation wishes to grant to Acorda, an exclusive license to U.S. Patent No. 5,952,357, including all intellectual property rights therein, for the development and commercialization of pharmaceutical products for all purposes; and

**WHEREAS**, the work leading to the Licensed Patents was supported in part by an agency of the U.S. Government, and Foundation is obligated to comply with U.S. OMB Circular A-124 and 37 CFR Part 401; and as such, this license is subject to the applicable terms of U.S. Government regulations concerning Government funded inventions.

**NOW, THEREFORE**, for and in consideration of the mutual covenants and the premises herein contained, the Parties, intending to be legally bound, hereby agree as follows:

**ARTICLE 1**

**DEFINITIONS**

The following terms as used herein shall have the following meanings:

**1.1**     **“Affiliate”** shall mean any corporation or non-corporate business entity which controls, is controlled by, or is under common control with a Party to this Agreement. A corporation or non-corporate business entity shall be regarded as in control of another corporation if it owns, or directly or indirectly controls, at least fifty (50%) percent of the voting stock of the other corporation, or (a) in the absence of the ownership of at least fifty (50%) percent of the voting stock of a corporation or (b) in the case of a non-corporate business entity, or non-profit corporation, if it possesses, directly or indirectly, the power to direct or cause the

---

direction of the management and policies of such corporation or non-corporate business entity, as applicable.

**1.2**     **“Clinical Trial”** shall mean one of those trials on sufficient number of subjects that are designed to establish that a pharmaceutical product is safe and efficacious for its intended use, to define warnings, precautions and adverse reactions that are associated with the pharmaceutical product or label expansion of such pharmaceutical product.

**1.3**     **“Dollars”** shall mean United States dollars.

**1.4**     **“Earned Royalties”** shall mean royalties payable to Foundation by Acorda for the Sale of a Royalty-Bearing Product, as provided in Section 3.2.

**1.5**     **“FDA”** shall mean the United States Food and Drug Administration or successor entity.

**1.6**     **“Licensed Patents”** shall mean U.S. Patent No. 5,952,357, together with any and all substitutions, extensions, divisionals, continuations, or continuations-in-part of such patent (or its parent application), including reexamined and reissued patents, and all foreign counterparts of any of the foregoing.

**1.7**     **“Licensed Product”** shall mean any product or process that is covered by, or the manufacture or use of which is covered by, a Valid Claim.

**1.8**     **“Licensed Territory”** shall mean the world.

**1.9**     **“Net Sales”** shall mean the actual amounts received by Acorda or an Affiliate or sublicensee of Acorda for the Sale of Royalty-Bearing Products to a Third Party purchaser less the following deductions to the extent that such amounts are actually accrued or incurred as to such sales: (a) freight, packaging and insurance costs incurred in transporting the Royalty-Bearing Product to such customers; (b) quantity, cash and other trade discounts or rebates actually allowed and taken, including without limitation, discounts or rebates granted to managed health care organizations or to any governmental agency or branch thereof; (c) customs duties, surcharges, taxes and other governmental charges incurred in connection with the exportation or importation of such Royalty-Bearing Products; and (d) amounts repaid or credited by reason of rejections, recalls or retroactive price reductions.

**1.10**    **“Regulatory Approval”** shall mean the approvals, registrations or authorizations of the FDA or other applicable regulatory agency necessary for the manufacture, distribution, use or sale of a pharmaceutical or diagnostic product in the United States.

**1.11**    **“Royalty-Bearing Product”** shall mean the product known as Fampridine-SR for all indications.

**1.12**    **“Sale”** or **“Sold”** shall mean the sale, transfer, exchange, or other commercial disposition of Royalty-Bearing Products by Acorda, its Affiliates or sublicensees. In case of doubt, Sales of Royalty-Bearing Products shall be deemed consummated no later than receipt of

payment from a Third Party for the applicable transaction involving such Royalty Bearing Product.

**1.13     “Third Party”** shall mean any entity or individual other than Acorda, Foundation or an Affiliate of either of them.

**1.14     “Valid Claim”** shall mean: (a) an issued claim of any unexpired patent included among the Licensed Patents, which patent has not been (i) held unenforceable, unpatentable or invalid by a decision of a court or governmental body of competent jurisdiction that is not further appealable, (ii) rendered unenforceable through reexamination, reissue, disclaimer or otherwise, (iii) lost through an interference proceeding or (iv) abandoned; or (b) a claim of a pending application within the Licensed Patents, provided that not more than five (5) years have elapsed from the date the claim takes priority for filing purposes.

## **ARTICLE 2**

### **GRANT OF LICENSE**

**2.1     License.** Subject to the terms and conditions of this Agreement and to the rights of and obligations to the U.S. Government as set forth in U.S. Office of Management & Budget Circular A-124 or 37 CFR Part 401 et seq., Foundation hereby grants to Acorda and its Affiliates and Acorda hereby accepts an exclusive, fully sublicenseable license under the Licensed Patents to practice the inventions claimed therein and to research, develop, make, have made, use, sell, offer for sale, have sold, import and otherwise exploit Licensed Products in the Licensed Territory during the term of this Agreement.

**2.2     Retained License.** The license granted in Section 2.1 above are further subject to a right and license retained by Foundation and Cornell to practice the Licensed Patents and any improvements thereto for non-commercial academic research and education purposes only.

**2.3     Sublicenses.** Acorda may grant sublicenses to Third Parties under the license in Section 2.1 to practice Licensed Patents and to research, develop, make, have made, use, sell, offer for sale, have sold, import or otherwise exploit Licensed Products upon prior written approval by Foundation, such approval not to be unreasonably withheld or delayed. If Acorda fails to obtain the prior written consent of Foundation to a sublicense agreement, Foundation shall have the right to either terminate this Agreement pursuant to Section 10.3 or require that the sublicense be terminated. Any such sublicense shall contain all the provisions of this Agreement which are protective of and beneficial to Foundation and Acorda shall be responsible to Foundation for the payment of Earned Royalties on Net Sales made by such sublicensees as though they were Net Sales made by Acorda.

**2.4     No Implied License.** The license and rights granted in this Agreement shall not be construed to confer any rights upon Acorda by implication, estoppel, or otherwise as to any technology not specifically identified in this Agreement as Licensed Patents.

**2.5     Government Regulations.** Acorda shall alone have the obligation to ensure that any Licensed Product it makes, uses, or sells, leases, or otherwise disposes of is not defective,

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

that any Licensed Product satisfies all applicable government regulations and that any export of any Licensed Product satisfies export requirements.

## ARTICLE 3

### COMPENSATION

**3.1 License Execution Fee.** Within ten (10) days of the Effective Date, Acorda shall pay Foundation a license execution fee of [\*\*].

**3.2 Earned Royalties on Royalty-Bearing Products.** For Sales of Royalty-Bearing Product in the Licensed Territory, Acorda shall pay or cause to be paid to Foundation Earned Royalties equal to the following percentages of the aggregate annual Net Sales of such Royalty-Bearing Product by Acorda, its Affiliates and its sublicensees:

(a) for the portion of such aggregate annual Net Sales of such Royalty-Bearing Product less than [\*\*] in any calendar year, [\*\*] of such Net Sales;

(b) for the portion of such aggregate annual Net Sales of such Royalty-Bearing Product between [\*\*] and up to [\*\*] in any calendar year, [\*\*] of such Net Sales; and

(c) for the portion of such aggregate annual Net Sales of such Royalty-Bearing Product greater than [\*\*] in any calendar year, [\*\*] of such Net Sales.

**3.3 Annual Minimum Royalty .**

(a) Subject to Section 3.3(b), if Acorda's annual Earned Royalties payment for the Royalty-Bearing Product to Foundation pursuant to Section 3.2 after the first full calendar year anniversary following the date of Regulatory Approval for the Royalty-Bearing Product, or in any calendar year thereafter, is less than [\*\*] (the " **Minimum Royalty** "), Acorda shall make or cause to be made a payment to Foundation within sixty (60) days after the end of such applicable calendar year equal to the difference between the Minimum Royalty and the total Earned Royalties payment to Foundation for all Royalty-Bearing Products for that calendar year, together with the applicable report in accordance with Article 4.

(b) If during a given calendar year, the Earned Royalties payment to Foundation pursuant to Section 3.2 for Royalty-Bearing Products exceeds the Minimum Royalty for such year pursuant to Section 3.3(a), Acorda shall have satisfied the requirements of Section 3.3(a) for such year without any additional payment needed.

**3.4 Milestone Payments.** Acorda shall pay Foundation a milestone payment in the amount specified below no later than [\*\*\*] days after the occurrence of Milestone 1 and [\*\*\*] days after the occurrence of Milestone 2, both milestones as defined below.

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

Event	Milestone Payment
(i) The effective date of a successful reissuance or reexamination of the Licensed Patents (“ <b>Milestone 1</b> ”).	\$ [**]
(ii) The date of completion of a Clinical Trial testing the use of Fampridine-SR in Amyotrophic Lateral Sclerosis (ALS), provided that such Clinical Trial shall be initiated at Acorda’s discretion and a negative or non-statistically significant trial would not trigger this milestone (“ <b>Milestone 2</b> ”).	\$ [**]

No milestone payment shall be paid more than once to Foundation pursuant to this Section 3.4. Milestone 1 and Milestone 2 are independent of each other and Milestone 2 may occur prior to Milestone 1. In any event, Acorda shall pay the specified milestone payment only upon the occurrence of the corresponding milestone event, regardless of the order of occurrence of the milestone events.

**3.5 Research Support.** Pursuant to a sponsored research agreement to be negotiated by the Parties, Acorda shall pay Foundation [\*\*] per year for research support for two (2) years beginning the first full calendar year of commercial sales for the Royalty-Bearing Product, Fampridine-SR. Such sponsored research agreement shall include commercially reasonable terms and conditions as are typical for sponsored research agreements of similar nature in the biotechnology industry as discussed and agreed upon in good faith by the Parties, and further, shall provide that the payment for the first year shall be due within sixty (60) days after the commencement of commercial sales for the Royalty-Bearing Product while the second payment shall be due within sixty (60) days after the first anniversary of commercial sales for the Royalty-Bearing Product.

## ARTICLE 4

### REPORTS, PAYMENTS AND ACCOUNTING

**4.1 Earned Royalties Reports and Records.** During the term of this Agreement, Acorda shall furnish, or cause to be furnished to Foundation, quarterly written reports governing each of Acorda and its Affiliates and sublicensees for each fiscal quarter showing, as applicable:

- (a) the gross sales of all Royalty Bearing Products Sold by Acorda, its Affiliates and sublicensees, in the Licensed Territory during the reporting period, together with the calculations of Net Sales in accordance with Section 1.9;
- (b) the Earned Royalties payable in Dollars, which shall have accrued hereunder in respect to such Net Sales;
- (c) the exchange rates, if any, in determining the amount of Dollars; and

- (d) the occurrence of any event triggering a milestone payment obligation in accordance with Section 3.4.

**4.2 Payment Terms.** Acorda shall provide Foundation with quarterly written reports of all sales, or other dispositions of Licensed Products by Acorda and its Affiliates and sublicensees. In order to minimize Acorda's time spent on royalty reports, a brief one-page report form (a "Royalty Report Form"), substantially the same as the form attached in Appendix A, will satisfy Foundation's reporting requirements under this Section 4.2. The report shall be made within forty-five (45) days after the end of each calendar quarter; *provided, however*, that if an Acorda sublicense provides that the sublicensee can submit its respective reports to Acorda forty-five (45) days or more after the end of each calendar quarter, Acorda may then delay submitting its royalty report under this Section 4.2 to Foundation with respect to such sublicensee until sixty (60) days after the end of each calendar quarter. Foundation agrees to keep the information in these reports confidential, except as may be necessary to maintain an action against Acorda for breach of this Agreement. Royalty payments for Net Sales of the Licensed Products invoiced during a calendar quarter shall accompany the Royalty Report Form for that quarter. The Royalty Report Form shall be submitted regardless of whether or not royalties are owed. Payments shall be made in Dollars. Conversion from foreign currencies, if any, shall be based upon the conversion rate published in *The Wall Street Journal* on the last day of the particular quarterly accounting period (or on the last business day on which *The Wall Street Journal* is published during said quarterly period) for which royalties are due. Royalty checks shall be made payable to Cornell Research Foundation Inc. and mailed to the address specified in Section 12.11.

**4.3 Minimum Royalty Calculation.** Acorda shall provide in the Royalty Report Form for the last quarter in each calendar year, the total Earned Royalties paid by Acorda to the Foundation for such calendar year and if such total is less than the Minimum Royalty, Acorda shall pay Foundation an amount equal to the difference between the total Earned Royalties paid in such calendar year and the Minimum Royalty.

**4.4 Right to Audit.** Foundation shall have the right, upon prior written notice to Acorda, not more than once in each Acorda fiscal year, to engage an independent nationally-certified auditing firm selected by Foundation and acceptable to Acorda, which acceptance shall not be unreasonably withheld or delayed, to have access during normal business hours of Acorda as may be reasonably necessary to verify the accuracy of the Earned Royalties reports required to be furnished by Acorda pursuant to Section 4.1 of the Agreement. If such audit by Foundation shows any underpayment of Earned Royalties by Acorda, its Affiliates or sublicensees, then, within thirty (30) days after Acorda's receipt of such report, Acorda shall remit or shall cause its sublicensees to remit to Foundation:

- (a) the amount of such underpayment; and

(b) if such underpayment exceeds five percent (5%) of the total Earned Royalties owed for the fiscal year then being reviewed, the reasonably necessary fees and expenses of such auditing firm performing the audit. Otherwise, such fees and expenses shall be borne solely by Foundation. Any overpayment of Earned Royalties shall be fully creditable against future Earned Royalties payable in any subsequent royalty period.

**4.5 Confidentiality of Records.** All information subject to review under this Article 4 shall be deemed Acorda's Confidential Information (as defined in Section 9.1). The independent nationally-certified auditing firm shall not disclose to Foundation or to any Third Party any such Confidential Information, except for any Confidential Information showing a discrepancy in amount owed to Foundation, and Foundation shall not use any such information for any purpose other than determining and enforcing its rights under this Agreement. Foundation agrees to hold such records confidential, except as may be necessary to maintain an action against Acorda for breach of this Agreement.

**4.6** The records required under Article 4 shall be maintained and available for inspection for a period of five (5) years following the calendar quarter to which they pertain. This Section 4.6 shall survive termination of this Agreement.

**4.7** Payments due under this Agreement that are more than sixty (60) days late shall be subject to a twenty percent (20%) per annum interest charge.

**4.8** Acorda shall keep Foundation appropriately informed about Acorda's development and commercialization efforts with respect to Licensed Products. Without limiting the generality of the foregoing, Acorda shall provide Foundation with written notice of significant development, regulatory approval and commercialization plans, activities and results with respect to Licensed Products. In addition, on each anniversary of the Effective Date during the term of this Agreement (commencing with the first (1<sup>st</sup>) anniversary thereof), Acorda shall provide Foundation with a written annual report summarizing Acorda's efforts and progress in developing and commercializing Licensed Products during the immediately preceding twelve (12) months.

## **ARTICLE 5**

### **PATENTS AND PATENT COSTS**

**5.1 Prosecution and Maintenance of Licensed Patents.** Foundation shall be primarily responsible for all patent prosecution and maintenance activities pertaining to Licensed Patents. Foundation shall keep Acorda reasonably informed of its activities relating to the filing, prosecution and maintenance of Licensed Patents, including providing copies of all filings and correspondence with patent authorities, in a timely manner, so as to give Acorda an opportunity to comment thereon. Foundation shall use good faith efforts to accommodate all such comments. Without limiting the generality of the foregoing, Foundation shall work collaboratively with Acorda to secure the reissuance or reexamination of the Licensed Patents in a manner acceptable to Foundation and Acorda. Acorda agrees to keep any documentation received under this Section 5.1 confidential in accordance with Article 9 herein.

**5.2 Future Patent Costs.** Acorda shall pay all fees and out-of-pocket costs incurred by Foundation pursuant to its activities under Section 5.1 after the Effective Date for on-going patent prosecution and maintenance activities for the Licensed Patents (the "**Future Patent Costs**"). Acorda shall reimburse Foundation, no later than thirty (30) days after receipt of an invoice from Foundation for such Future Patent Costs.

**5.3 Acorda's Payment Obligation.** Acorda's obligation, pursuant to Section 5.2 to pay for domestic and foreign patent filing, prosecution, and maintenance costs for Licensed Patents shall continue for so long as this Agreement remains in effect, provided, however, that Acorda may terminate its obligations with respect to any given patent application or patent in the Licensed Patents in any particular country or jurisdiction upon thirty (30) days written notice to Foundation, provided, further, that Acorda's rights under such patent applications or patents in such countries, for which it has terminated its payment obligations pursuant to this Section 5.3, shall terminate. Patent costs already committed to prior to the date of the termination notice and which are not cancelable, shall be the responsibility of Acorda and shall survive termination of this Agreement.

## ARTICLE 6

### INFRINGEMENT

**6.1 Enforcement of Patents.** If either Acorda or Foundation becomes aware of a product made, used or sold in the Licensed Territory, which it believes infringes a Valid Claim, the Party obtaining such knowledge shall promptly advise the other Party of all relevant facts and circumstances pertaining to the potential infringement. Acorda shall have the first right, but not the obligation, to enforce any patent rights within the Licensed Patents against such infringement, at its own expense. Foundation shall cooperate with Acorda in such effort, at Acorda's expense, including being joined as a Party to such action, if necessary. Any damages or costs recovered in connection with any action filed by Acorda hereunder which exceed Acorda's out-of-pocket costs and expenses of litigation, shall be deemed to be the proceeds of Sales of Royalty-Bearing Products in the fiscal quarter received by Acorda, and Earned Royalties shall be payable by Acorda to Foundation thereon in accordance with the terms of this Agreement.

**6.2 Backup Enforcement Right of Foundation.** If Acorda fails within one hundred twenty (120) days after receiving notice from Foundation of a potential infringement, or providing Foundation with notice of such infringement, to either (a) terminate such infringement or (b) institute an action to prevent continuation thereof and, thereafter to prosecute such action diligently, or if Acorda notifies Foundation that it does not plan to terminate the infringement or institute such action, then Foundation shall have the right to do so at its own expense; provided however, that Foundation first consults with Acorda and gives due consideration to Acorda's reasons for not instituting actions to terminate or otherwise prevent continuation of such infringement. If Foundation decides to pursue such infringement, Acorda shall cooperate with Foundation in such effort including being joined as a Party to such action if necessary. Foundation shall be entitled to retain all damages or costs awarded to Foundation in such action.

## ARTICLE 7

### **REPRESENTATIONS AND WARRANTIES; EXCLUSION OF WARRANTIES**

#### **7.1 Foundation Representations and Warranties.**

(a) Foundation represents and warrants that it has the right to enter into this Agreement. Foundation warrants that it has the right to convey to Acorda the rights granted under this Agreement.

(b) Foundation warrants that it is the sole owner of Licensed Patents prior to the effective date of this Agreement, and has not granted any license or other rights to any third party under the Licensed Patents which rights are still in existence, subject to U.S. government regulations concerning government funded inventions.

(c) Foundation makes no representation or warranty that Licensed Patents will be reissued.

(d) Foundation makes no representations or warranties concerning the validity or scope of any Licensed Patents.

(e) Foundation does not warrant that any Licensed Product made, used, sold, leased or otherwise disposed of under the license of this Agreement is or will be free from infringement of patents of third parties.

(f) Nothing herein shall be construed as granting by implication, estoppel, or otherwise any licenses or rights under patents or other rights of Foundation or Cornell or other persons other than Licensed Patents, regardless of whether such patents or other rights are dominant or subordinate to any Licensed Patents.

(g) Foundation is under no obligation to furnish any technology or technological information other than the Licensed Patents.

(h) Nothing herein shall be construed to grant Acorda rights under any applications or patents other than Licensed Patents.

(i) Foundation does not make any representations, extend any warranties of any kind, express or implied, or assume any responsibility whatever concerning the manufacture, use, or sale, lease or other disposition by Acorda or its vendees or transferees of Licensed Products.

(j) Except as expressly set forth in this Agreement, FOUNDATION MAKES NO REPRESENTATIONS AND EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR THAT THE USE OF THE LICENSED PRODUCTS WILL NOT INFRINGE ANY PATENT, COPYRIGHT, TRADEMARK, OR OTHER RIGHTS OR ANY OTHER EXPRESS OR IMPLIED WARRANTIES.

#### **7.2 Acorda Representations and Warranties.** Acorda represents, warrants and covenants to Foundation that:

(a) this Agreement is a legal and valid obligation of, binding upon, and enforceable against Acorda in accordance with the terms of this Agreement;

- (b) Acorda has the right to enter into this Agreement and perform the obligations set forth in this Agreement; and
- (c) the execution, delivery and performance of this Agreement does not conflict with, constitute a breach of, or in any way violate any arrangement, understanding or agreement to which Acorda is a party or by which Acorda is bound.

## ARTICLE 8

### INDEMNIFICATION; LIMITATION OF LIABILITY

**8.1 Indemnification by Acorda.** Acorda shall defend, indemnify and hold harmless Foundation and Cornell and their respective trustees, officers, directors, employees, agents and students (the “**Foundation Indemnitees**”), from and against any and all losses, liabilities, expenses or damages (including reasonable attorneys’ fees) (collectively, the “**Losses**”) resulting from claims made or legal proceedings instituted, made or brought against Foundation and/or Cornell by a Third Party arising or alleged to arise by reason of, or in connection with, any and all personal injury (including death) and property damage caused or contributed to, in whole or in part, by the manufacture, testing, design, use, Sale or labeling of any Licensed Products by Acorda, its Affiliates, contractors, agents, or sublicensees, except to the extent of any Losses that arise from the negligence or intentional misconduct of Foundation Indemnitees.

**8.2** In the event Foundation is found to be in breach of Sections 7.1(a) and/or 7.1(b) of this Agreement, Foundation shall use its best efforts to remedy such breach within ninety (90) days of receipt by Foundation of written notification that such a breach has occurred. If Foundation is unable to remedy such breach within ninety (90) days after receiving such written notification of a breach, Foundation shall use its best efforts to obtain the right to grant, and to grant to Acorda, a non-exclusive, fully sublicenseable license under the Licensed Patents to practice the inventions claimed therein and to research, develop, make, have made, use, sell, offer for sale, have sold, import and otherwise exploit Licensed Products in the Licensed Territory pursuant to a new license agreement, the terms of which will be negotiated in good faith by the Parties (which terms shall be no less favorable to Acorda than the terms of this Agreement). Foundation shall not be liable for any indirect, special, consequential, or other damages whatsoever, whether grounded in tort (including negligence), strict liability, contract or otherwise. Foundation shall not have any responsibilities or liabilities whatsoever with respect to Licensed Products.

**8.3 Indemnification Procedure.** To be indemnified hereunder, the Foundation shall provide Acorda with prompt notice of the claim giving rise to the indemnification obligation pursuant to this Article 8 and the exclusive ability to defend (with the reasonable cooperation of Foundation) or settle any such claim *provided however*, that Acorda shall not enter into any settlement for damages other than monetary damages without the Foundation’s written consent, such consent not to be unreasonably withheld or delayed. The Foundation shall have the right to participate, at its own expense and with counsel of its choice, in the defense of any claim or suit that has been assumed by Acorda.

**8.4 Insurance.** Acorda shall maintain commercially reasonable levels of insurance or other adequate forms of protection to satisfy its indemnification obligations under this Agreement.

## ARTICLE 9

### CONFIDENTIALITY

**9.1 Nondisclosure of Confidential Information.** Except as otherwise provided hereunder, during the term of this Agreement and for a period of five (5) years thereafter, Acorda and Foundation each agrees to retain in strict confidence, use only for the purposes of this Agreement, and not disclose any written information or data supplied by one Party to the other under this Agreement and marked as proprietary or confidential without the prior written consent of the disclosing Party. For purposes of this Agreement, all such information and data which a Party is obligated to retain in confidence shall be “**Confidential Information**.”

**9.2 Permitted Disclosure.** It shall not be a breach of this Article 9 if the recipient Party is required to disclose the other Party’s Confidential Information pursuant to an order of the government or a court of competent jurisdiction, provided that the recipient Party (a) provides the other Party with adequate notice of the required disclosure, (b) cooperates with the other Party’s efforts to protect its Confidential Information with respect to such disclosure and (c) takes all reasonable measures requested by the other Party to challenge or to modify the scope of such required disclosure. To the extent that it is reasonably necessary to fulfill its obligations or exercise its rights under this Agreement, or any rights which survive termination or expiration hereof, the recipient Party may disclose Confidential Information of the other Party to its Affiliates, sublicensees, consultants, outside contractors and clinical investigators provided that such entities or persons are bound by obligations of confidentiality and non-use as strict as the obligations in this Agreement and agree to use the Confidential Information only for such purposes as the recipient Party is authorized to use the Confidential Information.

**9.3 Exceptions.** The obligation under Section 9.1 not to use or disclose Confidential Information shall not apply to any part of such Confidential Information that the recipient Party can establish by competent written proof:

- (a) is or becomes patented, published or otherwise part of the public domain, other than by unauthorized acts of the recipient Party obligated not to disclose such Confidential Information, its Affiliates or sublicensees in contravention of this Agreement;
- (b) is disclosed to the recipient Party, its Affiliates or sublicensees by a Third Party having the right to disclose it;
- (c) prior to disclosure under this Agreement, was already in the possession of the recipient Party, its Affiliates or sublicensees, as proven through contemporaneous documentation;
- (d) results from the research and development by the recipient Party, its Affiliates or sublicensees, independent of disclosures from the disclosing Party of this

Agreement, provided that the persons developing such information have not had exposure to the Confidential Information received from the disclosing Party; or

- (e) Acorda and Foundation agree in writing may be disclosed.

**9.4 Publication.** It is the policy of Foundation and Cornell to promote and safeguard free and open inquiry by faculty, students and others. To further this policy, Foundation and Cornell shall retain the right to publish the technology described in Licensed Patents. Foundation and Cornell shall use reasonable efforts to furnish Acorda with a copy of any proposed publication relating to the Licensed Products at least sixty (60) days in advance of the publication date. Within this sixty (60) day period, Acorda shall review such proposed publication to determine whether Acorda desires to file patent applications on subject matter contained therein and if it is determined that a patent application should be filed, such patent application shall be filed within this sixty (60) day period.

## ARTICLE 10

### TERM AND TERMINATION

**10.1 Term.** Unless sooner terminated as otherwise provided in this Agreement, the term of this Agreement shall commence on the Effective Date hereof and shall continue in full force and effect until the expiration of the last to expire Valid Claim.

**10.2 Termination by Acorda.** Acorda may terminate this Agreement at any time upon forty five (45) days prior written notice to Foundation.

**10.3 Termination for Material Breach.** If either Party breaches a material obligation under this Agreement, the other Party shall have the right to give the breaching Party written notice describing the alleged breach. If the breaching Party does not cure such breach within sixty (60) days after receipt of such notice, the notifying Party may, in addition to any other rights it may have under this Agreement, terminate this Agreement effective immediately. However, if there is a dispute between the Parties as to termination under this Section 10.3, no termination shall be effected until such dispute is resolved pursuant to Section 12.1.

**10.4** Upon termination of this Agreement for any reason, including the end of term as specified above, all rights and obligations under this Agreement shall terminate, except those that have accrued prior to termination and except as specified in the Agreement.

## ARTICLE 11

### ASSIGNMENT

Neither Party may assign or transfer this Agreement or any rights or obligations hereunder without the prior written consent of the other, except a Party may make such an assignment without the other Party's written consent to an Affiliate or to a successor to all, or substantially all, of the business to which this Agreement relates of such Party, whether in a merger, sale of stock, sale of assets or other transaction. Any permitted successor or assignee of rights and/or obligations hereunder shall, in writing to the other Party, expressly assume

performance of such rights and/or obligations. Any permitted assignment shall be binding on the successors of the assigning Party. Any assignment or attempted assignment by either Party in violation of the terms of this Article 11 shall be null and void and of no legal effect.

## ARTICLE 12

### MISCELLANEOUS

**12.1 Dispute Resolution.** If any disputes, controversies or claims arise out of, or in connection with, this Agreement (each, a “**Dispute**”), the Parties shall notify each other in writing of such Dispute and will use good faith efforts to resolve the Dispute. If the Parties are unable to resolve such Dispute within ten (10) business days of a Party receiving notification from the other Party and requesting resolution of such Dispute, then either Party may, for a period of thirty (30) days thereafter, request in writing that such Dispute be resolved through arbitration, and such arbitration shall be conducted under the auspices of the American Arbitration Association pursuant to that organization’s rules for commercial arbitration. If neither Party requests to resolve the Dispute through arbitration within such thirty (30) day period, then either Party may pursue resolution through any court of competent jurisdiction in accordance with Section 12.7. Notwithstanding the foregoing, either Party may apply to a court of competent jurisdiction for a temporary restraining order, a preliminary or permanent injunction, or other equitable relief.

**12.2** Notwithstanding Section 12.1, Foundation reserves the right and power to proceed with direct judicial remedies against Acorda without conciliation, mediation, mediation, arbitration or disputer resolution for breach of the royalty and/or milestone payments and sales reporting provisions of this Agreement after giving written notice of such breach to Acorda followed by an opportunity period of sixty (60) days in which to cure such breach. In collecting overdue royalty and milestone payments and securing compliance with reporting obligations, Foundation may use all judicial remedies available.

**12.3 Legal Compliance.** Acorda shall comply with all laws and regulations relating to its manufacture, use, Sale, labeling or distribution of Licensed Products and shall not take any action which would cause Foundation or Acorda to violate any applicable laws or regulations.

**12.4 Independent Contractor.** Acorda’s relationship to Foundation shall be that of a licensee only. Neither Party shall be considered to be an employee or agent of the other, nor shall this Agreement constitute, create or in any way be interpreted as a joint venture, partnership or formal business organization of any kind. In that respect, neither Party shall have the authority to execute any agreement on behalf of the other Party, nor shall either Party have any authority to negotiate any agreement, except as the other Party may expressly direct in writing.

**12.5 Patent Marking.** Acorda agrees to mark the appropriate patent number or numbers on all Licensed Products made or Sold in the Licensed Territory in accordance with all applicable governmental laws, rules and regulations, and to requires its sublicensees to do the same.

**12.6 Use of Names.** Acorda shall not use, nor shall Acorda permit sublicensees to use, the names, trademarks, logos or symbols of Foundation or Cornell University, or their respective employees, students and faculty members for any commercial purpose, except as required to comply with law, regulation or court order, without the prior written approval of Foundation. Foundation shall obtain the prior written approval of Acorda prior to making use of the name, trademarks, logos or symbols of Acorda for any commercial purpose, except as required to comply with law, regulation or court order.

**12.7 Governing Law.** This Agreement and all amendments, modifications, alterations, or supplements hereto, and the rights of the Parties hereunder, shall be construed under and governed by the laws of the State of New York, U.S.A (without regard to its laws regarding choice of law) and the United States of America. Only federal or state courts located in the State of New York, U.S.A., shall have jurisdiction to hear and decide any controversy or claim between the Parties arising under or relating to this Agreement.

**12.8 Entire Agreement.** This Agreement and the Appendices attached hereto and incorporated herein constitutes the entire, final and exclusive agreement between the Parties hereto and supercedes and terminates all prior agreements and understandings between the Parties with respect to the subject matter hereof. No subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the Parties unless reduced to writing and signed by an authorized officer of each Party.

**12.9 Survival.** Articles 7, 8, 9, and 12 and Section 4.6 shall survive termination of this Agreement for any reason.

**12.10 Severability.** All rights and restrictions contained herein may be exercised and shall be applicable and binding only to the extent that they do not violate any applicable laws and are intended to be limited to the extent necessary so that they will not render this Agreement illegal, invalid or unenforceable. If any provision or portion of any provision of this Agreement, not essential to the commercial purpose of this Agreement, shall be held to be illegal, invalid or unenforceable by a court of competent jurisdiction, it is the intention of the Parties that the remaining provisions or portions thereof shall constitute their agreement with respect to the subject matter hereof, and all such remaining provisions, or portions thereof, shall remain in full force and effect. To the extent legally permissible, any illegal, invalid or unenforceable provision of this Agreement shall be replaced by a valid provision which shall implement the commercial purpose of the illegal, invalid, or unenforceable provision. In the event that any provision essential to the commercial purpose of this Agreement is held to be illegal, invalid or unenforceable and cannot be replaced by a valid provision which will implement the commercial purpose of this Agreement, the Party who is the beneficiary of such illegal, invalid or unenforceable provision has the right to terminate this Agreement upon written notice, effective upon receipt, to the other Party.

**12.11 Notices .** Any notice required or permitted to be given under this Agreement shall be in writing, shall specifically refer to this Agreement and shall be deemed to have been sufficiently given for all purposes if mailed by first class certified or registered mail, postage prepaid, express delivery service or personally delivered. Unless otherwise specified in writing, the mailing addressee of the Parties shall be as described below.

For Acorda:

Acorda Therapeutics, Inc.  
15 Skyline Drive  
Hawthorne, New York 10532  
Attention: Harold Safferstein  
Title: Vice President, Business Development

For Foundation:

Payments to Foundation shall be sent to:

Cornell Research Foundation, Inc.  
20 Thornwood Drive, Suite 105  
Ithaca, NY 14850  
Attn: Accounting  
Phone: 607-257-1081  
Fax: 607-257-1015

All other communications to Foundation shall be sent to:

Cornell Research Foundation, Inc.  
418 E. 71<sup>st</sup> Street, Suite 61  
New York, NY 10021  
Attn: Brian J. Kelly, Vice President  
Phone: 212-746-6186  
FAX: 212-746-6662

**12.12 Force Majeure.** Any delays in, or failure of, performance of any Party to this Agreement shall not constitute a default hereunder, or give rise to any claim for damages, if and to the extent caused by occurrences beyond the control of the Party affected, including, but not limited to, acts of God, acts of terrorism, strikes or other concerted acts of workmen, civil disturbances, fires, floods, earthquakes, explosions, riots, war, rebellion, sabotage, acts of governmental authority or failure of governmental authority to issue licenses or approvals which may be required.

**12.13 No Waiver.** The failure by either Party, at any time, or for any period of time, to enforce any of the provisions of this Agreement, shall not be construed as a waiver of such provisions or as a waiver of either Party's rights thereafter to enforce each and every such provision of this Agreement.

**12.14 Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

**IN WITNESS WHEREOF**, Acorda and Foundation have caused this Agreement to be signed, under seal, by their duly authorized representatives below.

ACORDA THERAPEUTICS, INC.

By: /s/ Harold T. Safferstein

Name: Harold T. Safferstein

Title: Vice President, Business Development

CORNELL RESEARCH FOUNDATION, INC.

By: /s/ Brian Kelly

Name: Brian Kelly

Title: Vice President

## **TABLE OF CONTENTS**

ARTICLE 1	DEFINITIONS
ARTICLE 2	GRANT OF LICENSE
ARTICLE 3	COMPENSATION
ARTICLE 4	REPORTS, PAYMENTS AND ACCOUNTING
ARTICLE 5	PATENTS AND PATENT COSTS
ARTICLE 6	INFRINGEMENT
ARTICLE 7	REPRESENTATIONS AND WARRANTIES; EXCLUSION OF WARRANTIES
ARTICLE 8	INDEMNIFICATION; LIMITATION OF LIABILITY
ARTICLE 9	CONFIDENTIALITY
ARTICLE 10	TERM AND TERMINATION
ARTICLE 11	ASSIGNMENT
ARTICLE 12	MISCELLANEOUS

## APPENDIX A - ROYALTY REPORT

Report royalty payment information to the Cornell Research Foundation, Inc (CRF) using the report format or facsimile attached to these instructions. This minimal information must be provided in order to correctly record royalty related events required by your license agreement with CRF.

Use a separate report to record royalty information for each license agreement. For each licensee agreement, report royalty sales by CRF docket number, which identifies the technology. List each contributing technology if more than one technology is used to produce a royalty generating process/product. This level of detail permits evaluation of the use of each technology under license with your company.

Submit this information along with appropriate payment to:

Cornell Research Foundation, Inc.  
ATTN: Finance and Accounting  
20 Thornwood Drive, Suite 105  
Ithaca, NY 14850  
(607) 257-1081  
[www.crf.cornell.edu](http://www.crf.cornell.edu)

For your convenience, payments may be made by FEDWIRE or ACH to:

Tompkins Trust Company  
The Commons  
Ithaca, NY 14851  
(607) 273-3210  
[www.tompkintrust.com](http://www.tompkintrust.com)

Account: 01-101-007353, ABA: 021302648

---

## ROYALTY REPORT – [licensee NAME]

LICENSEE NAME:

CRF LICENSE NUMBER:

REPORTING PERIOD:

Individual to contact concerning this information:

Name: \_\_\_\_\_ Phone # or email ID: \_\_\_\_\_

For each product/item subject to a royalty payment provision, provide the following information as applicable.

PRODUCT/ITEM:

CRF Docket Number	Country	Number of Units/Products Sold	Gross Sales By Country	Net Sales By Country	Royalty Rate	Less Minimum Royalty Payment Made	Net Royalty Payment Due
<b>Total Payment</b>							

3

---

### Exhibit 10.16

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

#### LICENSE AGREEMENT

THIS LICENSE AGREEMENT (the "Agreement") is made and entered into as of November 12, 2002 (the "Effective Date"), by and between Acorda Therapeutics, Inc., a corporation organized and existing under the laws of the State of Delaware and having a principal place of business at 15 Skyline Drive, Hawthorn, New York, USA 10532 ("Acorda"), and CeNeS Pharmaceuticals, PLC, a corporation organized and existing under the laws of the United Kingdom and having a principal place of business at Compass House, Vision Park, Chivers Way, Histon, Cambridge CB4 9ZR, England ("CeNeS").

WHEREAS, CeNeS is the exclusive licensee of certain intellectual property rights pursuant to that certain agreement, as amended, entered into by and between the Ludwig Institute for Cancer Research ("Ludwig") and Cambridge Neuroscience Research, Inc. dated October 26, 1989 (the "Ludwig Agreement");

WHEREAS, CeNeS and Acorda are parties to that certain License Option Agreement dated as of April 3, 2002, as amended, (the "License Option Agreement"), pursuant to which CeNeS granted Acorda the option to take a sublicense of certain rights licensed to CeNeS under the Ludwig Agreement; and

WHEREAS, Acorda desires to exercise such option and to take a sublicense of such rights as set forth herein,

NOW, THEREFORE, intending to be legally bound and upon the terms, conditions and mutual covenants hereinafter set forth, the parties agree as follows:

---

## **Part 1 - Definitions**

1.1       **“ Affiliate ”** means any corporation, company, partnership, joint venture and/or firm which controls, is controlled by, or is under common control with a party to this Agreement. As used in this Paragraph, the term “control” means (a) in the case of corporate entities, direct or indirect ownership of at least fifty percent (50%) of the stock or shares having the right to vote for the election of directors, and (b) in the case of non-corporate entities, direct or indirect ownership of at least fifty percent (50%) of the equity interest with the power to direct the management policies of such non-corporate entities.

1.2       **“ Licensed Know-How ”** means all unpatented know-how, trade secrets, information, data, methods, materials, techniques, reagents, cell lines, protein sequences or segments, and monoclonal antibodies, including without limitation, materials as described generally in Schedule B hereto, owned or controlled by CeNeS at any time during the term of the Agreement that is necessary or useful to practice the Patent Rights or to research, develop, make, use or sell Licensed Products.

1.3       **“ Licensed Products ”** means Protein Products and Non-Protein Products that are covered by one or more Valid Claims under the Patent Rights.

1.4       **“ Materials ”** means the cell lines and related biological materials that are in CeNeS’ possession or control as of the Effective Date of this Agreement and are directly related to the production of the protein GGF-2.

1.5       **“ NDA ”** means New Drug Application or a foreign equivalent.

1.6       **“ Net Sales ”** means the amount billed, invoiced, or received (whichever occurs first) for Sales, leases, or other transfers of Licensed Products, less:

(a)       customary trade, quantity and cash discounts or rebates, and non-affiliated brokers’ or agents’ commissions actually allowed and taken;

- (b) amounts repaid or credited by reason of rejection, recall or return;
- (c) to the extent separately stated on purchase orders, invoices, or other documents of sale, taxes levied on and/or other governmental charges made as to production, sale, transportation, delivery or use and paid by Acorda or a Sublicensee; and
- (d) reasonable charges for freight, packaging and insurance costs incurred in the delivery or transportation of Licensed Products provided by third parties, if separately stated.

Net Sales also includes the fair market value of any non-cash consideration received by Acorda or Sublicensees for the Sale, lease, or transfer of Licensed Products. The fair market value will be no less than the standard selling price for the applicable Licensed Products, each unit multiplied by the quantity of such Licensed Products delivered in exchange for such non-cash consideration.

1.7       **“Non-Protein Product”** means a product that is discovered, identified or developed through the use of material that is claimed or covered by a Valid Claim in the Patent Rights, as a target in a screening tool or otherwise, exclusive of Protein Products.

1.8       **“Patent Rights”** means the patents and patent applications listed on Schedule A attached hereto, including without limitation, the inventions described and/or claimed therein, and any divisionals, continuations, continuations-in-part (to the extent that a claim of such continuation-in-part is entitled to the priority date of at least one of the patents or patent applications identified in Schedule A), patents issuing thereon and reissues and reexaminations thereof, and any and all foreign patents and patent applications corresponding thereto, all to the extent that CeNeS has an ownership or an interest in such Patent Rights.

1.9       **“Phase II Clinical Trial”** means one of those trials on sufficient numbers of subjects that are designed to establish that a pharmaceutical product is safe and efficacious for its

intended use, and to define warnings, precautions and adverse reactions that are associated with the pharmaceutical product in the dosage range to be prescribed. A Phase II Clinical Trial shall be deemed to have commenced upon the date of the first dosing of the first subject in such trial.

1.10     **“Phase III Clinical Trial”** means one of those trials on sufficient numbers of subjects that are designed to establish that a pharmaceutical product is safe and efficacious for its intended use, and to define warnings, precautions and adverse reactions that are associated with the pharmaceutical product in the dosage range to be prescribed, and to support Regulatory Approval of a pharmaceutical product or label expansion of such pharmaceutical product. A Phase III Clinical Trial shall be deemed to have commenced upon the date of the first dosing of the first subject in such trial.

1.11     **“Proceeds”** means the royalties actually received by Acorda from its Sublicensees for Net Sales of Licensed Products that are Non-Protein Products.

1.12     **“Protein Product”** means a product that is, in whole or in part, composed of one or more proteins encoded by the growth factor gene GGF-2, or a fragment thereof, in whatever form including any mutants, analogues, homologues or derivative forms thereof, that is covered by a Valid Claim in the Patent Rights.

1.13     **“Regulatory Approval”** means the approvals, registrations or authorizations of the United States Food and Drug Administration (the “**FDA**”) or successor entity, or other applicable regulatory agency necessary for the manufacture, distribution, use or sale of a pharmaceutical or diagnostic product in the United States or a foreign equivalent in a major market country such as the United Kingdom, Canada, Japan or Germany.

1.14     **“Sold”** or **“Sale”** means the sale, transfer, exchange or other commercial disposition of Licensed Products by Acorda, its Affiliates or Sublicensees. In case of doubt,

Sales of Licensed Products shall be deemed consummated no later than receipt of payment from a third party for the applicable transaction involving such Licensed Product.

1.15     **“ Sublicense ”** means a grant by Acorda, either directly or indirectly (i.e., through multiple tiers of sublicenses) to a third party of a sublicense to practice any of the rights granted to Acorda hereunder in accordance with this Agreement. Such third party shall be referred to as a “Sublicensee” under this Agreement.

1.16     **“ Territory ”** means all countries and territories worldwide.

1.17     **“ USD ”** means United States dollars.

1.18     **“ Valid Claim ”** means (a) a pending claim of a patent application within the Patent Rights, which (i) has been pending under examination for less than seven (7) years, (ii) has been asserted in good faith, and (iii) has not been abandoned or finally rejected without the possibility of appeal or refiling; or (b) a claim of an issued, or granted and unexpired patent within the Patent Rights, which has not been held unenforceable, unpatentable or invalid by a decision of a court or governmental body of competent jurisdiction, which can no longer be appealed (i.e., within the time allowed for appeal), which has not been rendered unenforceable through disclaimer or otherwise, which has not been abandoned, or which has not been lost through an interference proceeding. A Valid Claim shall be defined as of each calendar half year ending June 30 and December 31.

### **Part 2 - License Grant**

2.1       CeNeS hereby grants to Acorda, and Acorda accepts, an exclusive license under the Patent Rights and Licensed Know-How to practice the same and to make, have made, use, import, offer for sale and sell Licensed Products throughout the Territory during the term of this Agreement.

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

2.2 Acorda hereby acknowledges that CeNeS is obligated to pay Ludwig certain royalties with respect to Sales by Acorda and Acorda hereby agrees to be amenable to suit by Ludwig in the event of non-payment of royalties due CeNeS hereunder by Acorda. If Ludwig is required to bring suit against Acorda for any material breach of this Agreement that remains uncured pursuant to Section 9.3(a), Acorda will pay all reasonable out-of-pocket costs incurred by Ludwig in connection therewith, including without limitation, reasonable attorneys fees and costs.

2.3 Acorda shall have the right to grant sublicenses to third parties with respect to any rights conferred upon Acorda under this Part 2, provided, however, that any sublicense shall be subject in all respects to the conditions (e.g., payment), restrictions, exceptions and termination provisions contained in this Agreement. Acorda shall provide written notice to CeNeS within sixty(60) days of the grant of any sublicense in accordance with this Section 2.3.

### **Part 3 - Royalties**

3.1 Acorda shall pay to CeNeS a non-refundable license fee in the sum of [\*\*] within ten (10) days after the Effective Date of this Agreement.

3.2 For the license granted to Acorda hereunder, Acorda shall pay CeNeS the following running royalties:

(a) Acorda shall pay to CeNeS the following running royalty based on annual Net Sales of Protein Products by Acorda or its Affiliates:

<u>Annual Net Sales in USD</u>	<u>Royalty Rate</u>
[**]	[**]
[**]	[**]
[**]	[**]
[**]	[**]

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

(b) If Acorda is required to pay a running royalty to a third party for a license to make, use, offer for sale, sell or import any Protein Product, then Acorda shall have the right to offset up to [\*\*] of such royalties actually paid to such third party against royalties otherwise due under the foregoing Paragraph 3.2(a); provided, however, that such right of offset shall be limited such that the royalty due under Paragraph 3:2(b) shall not be less than [\*\*] of annual Net Sales of Protein Products and provided further that the amount of the offset which is not available due to such [\*\*] cap cannot be carried-forward for application against future royalties due under Paragraph 3.2(a).

(c) In the event a Licensed Product is sold in the form of a combination product containing one or more active ingredients in addition to the Licensed Product active ingredient (hereinafter “Combination Licensed Product”), then Net Sales for such Combination Licensed Product, for purposes of calculating royalties due hereunder, will be adjusted by multiplying actual Net Sales of such Combination Licensed Product by the applicable fraction, determined as follows:

(i) Unless Section 3.2(c)(ii), 3.2(c)(iii) or 3.2(c)(iv) applies below, the fraction A/(A+B) where A is the invoice price of the Licensed Product, if sold separately, and B is the sum of the invoice price(s) of any other active component or components in the combination, if sold separately.

(ii) If, on a country-by-country basis, the other active component or components in the Combination Licensed Product are not sold separately in said country, the

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

fraction shall be A/C where A is the invoice price of the Licensed Product if sold separately, and C is the invoice price- of the Combination Licensed Product.

(iii) If, on country by-country basis, the Licensed Product is not sold separately in said country, the fraction shall be [1-(B/C)] where B is the invoice price sum of any other active components or components in the combination, if sold separately and C is the invoice price of the Combination Licensed Product.

(iv) If, on a country-by-country basis, neither the Licensed Product nor the other active component or components of the Combination Licensed Product is sold separately in said country, the fraction shall be negotiated in good faith by the parties with the intention of agreeing upon a fair and equitable formula that reasonably reflects the relative value contributed by the Licensed Product to the total value of the combination in the Combination Licensed Product, as compared to the other active ingredients therein.

(d) Acorda shall pay to CeNeS a royalty of [\*\*] of annual Net Sales of Protein Products by Sublicensees.

(e) Acorda shall pay to CeNeS a royalty of [\*\*] of annual Net Sales by Acorda of Non-Protein Products, and [\*\*] of the Proceeds actually received by Acorda from its Sublicensees on their Sales of Non-Protein Products.

(f) Minimum Annual Royalty. To the extent that cumulative annual royalties paid to CeNeS with respect to each Licensed Product during any calendar year, commencing with the third calendar year following first commercial sale of any Licensed Product, are less than [\*\*], a minimum annual royalty with respect to such Licensed Product in the amount of such shortfall shall be payable by Acorda. If Acorda fails to pay any such minimum royalty for a Licensed Product, CeNeS shall have the option of converting the

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

license or any sublicense granted hereunder with respect to such Licensed Product to a nonexclusive license by giving Acorda written notice thereof.

3.3 Acorda shall pay to CeNeS the following non-refundable milestone payments for every Protein Product in respect of which Acorda, an Affiliate or Sublicensee achieves any or all of the milestone events indicated below. Should a Protein Product be abandoned by Acorda, Its Affiliate or Sublicensee for any reason following completion of any of the first five milestones but prior to the Approval of a NDA and Acorda commences development of a subsequent Protein Product, then Acorda shall resume the milestone payments for such subsequent Protein Product starting at the event subsequent to the event for which a milestone payment had already been paid. Each such milestone payment shall be paid within thirty (30) days of the achievement of the relevant milestone event. For clarity, each milestone payment shall be paid only once for each Protein Product and Acorda shall pay milestones on a Protein Product only if its active pharmaceutical ingredient (the "API"), is different from the API of any other Protein Product for which Acorda has already made milestone payments.

Milestone Event	Milestone Payment
Satisfactory completion of animal toxicology studies necessary to enter into Phase I clinical studies in accordance with the International Conference of Harmonization (ICH) guidelines provided by the US Food and Drug Administration*	\$ [**]
Issuance of an Investigational New Drug Application (or foreign equivalent**)	\$ [**]
Enrollment of the first subject in a Phase II clinical trial (or foreign equivalent**)	\$ [**]
Enrollment of the first subject in a Phase III clinical trial (or foreign equivalent**)	\$ [**]
Filing of a New Drug Application (or foreign equivalent**)	\$ [**]
Approval of a New Drug Application (or foreign equivalent**)	\$ [**]

\* "Completion of animal toxicology studies" shall mean the completion of all analysis of data generated in such study and delivery of the final report thereon.

\*\* "Foreign equivalent" shall mean the completion of the milestones in a foreign major market country such as the United Kingdom, Japan, Germany, Canada, etc.

3.4 (a) All amounts due hereunder shall be payable in United States Dollars. Royalty payments shall be made within sixty (60) days following the end of each calendar quarter. Each such payment shall include royalties which shall have accrued during the calendar quarter immediately preceding and shall be accompanied by a report setting forth separately the Net Sales of all Licensed Products sold during said calendar quarter. Any royalty payment required to be made to CeNeS under Paragraph 3.2(e) shall be made in U.S. Dollars on or before January 31st of following the calendar year to which such payment relates.

(b) Royalties shall be payable only once (at the highest applicable rate) with respect to the same unit of Licensed Product regardless of the number of claims of Patent rights pertaining to same. Royalties shall apply to any Sale of Licensed Product to a third party from which Acorda, its Affiliate or Sublicensee derives revenue. On any transfer or disposal of Licensed Product among Acorda, its Affiliates or Sublicensees, royalties shall become payable only upon further transfer to a third party.

(c) The remittance of royalties payable on the Net Sales of Licensed Product outside the U.S. shall be made to CeNeS in U.S. Dollars at the official rate of exchange of the currency of the country from which the royalties are payable (as quoted by Citibank N.A. for the last business day of the calendar quarter in which the royalties are payable) less any withholding or transfer taxes which are applicable. Acorda or a Sublicensee shall supply CeNeS with proof of payment of such taxes paid on CeNeS's behalf and shall cooperate with CeNeS in obtaining credit or refund of any such taxes.

(d) No royalties for Sales outside the U.S. shall be payable with respect to any Sales as to which conversion cannot be made of the currency billed in U.S. Dollars until such conversion can be legally made, at which time royalties shall be paid in U.S. Dollars at the rate of exchange quoted by Citibank, N.A., for the business day immediately preceding the date on which the restriction on conversion was lifted. However, CeNeS shall have the right to have the royalties payable by Acorda, its Affiliates or Sublicensees deposited in CeNeS's name in the blocked currency in an interest bearing account in a bank designated by CeNeS in the foreign country in question. In the event CeNeS cannot arrange to have the blocked currency transferred out of the foreign country within twelve (12) months after deposit, CeNeS shall notify Acorda in writing and Acorda shall as soon as possible thereafter cause such royalties (plus earnings thereon during the period of deposit) to be paid to CeNeS in U.S. Dollars at the rate of exchange quoted by Citibank, N.A. on the day the blocked currency was deposited in the bank designated by CeNeS. Upon receipt of the payment, CeNeS shall release to Acorda from the bank in the foreign country in question the blocked currency in accordance with Acorda's instructions.

(e) Acorda, its Sublicensees and Affiliates shall keep and maintain records of sales of Licensed Products for a period of three (3) years after the royalty period to which such records relate. Such records shall be open to inspection upon at least fifteen (15) business days' prior written notice at any reasonable time during normal business hours not more often than once each calendar quarter by an independent Certified Public Accountant selected by CeNeS, to whom Acorda or, if applicable, its Affiliates or Sublicensees, have no reasonable objection, who shall have the right to examine and make abstracts of the records kept pursuant to this Agreement and report findings of said examination of records to CeNeS insofar as it is necessary to evidence any mistake or impropriety on the part of Acorda. Said independent Certified Public Accountant

---

shall treat as confidential and shall not use or disclose to any third party any information acquired during the course of such examination, except information which shall be made available to CeNeS or Ludwig pursuant to any provision of this Agreement.

(f) Acorda's obligation to pay royalties with respect to Net Sales of Licensed Product in my country shall continue for so long as CeNeS owns or holds exclusive rights to a valid and enforceable issued patent within the Patent Rights covering such Licensed Product in Such country. If Acorda's obligation to pay royalties is based solely on the practice of the Patent Rights to discover or develop a Non-Protein Product, said obligation shall continue until fifteen (15) years from the Effective Date of this Agreement.

#### **Part 4 - Patent Matters**

4.1 Upon execution of this Agreement, Acorda shall assume responsibility and control, at its expense, during the Term for the preparation, filing, prosecution and maintenance of any and all patent applications and patents included in Patent Rights. Notwithstanding the previous sentence, Acorda shall furnish to CeNeS copies of all material documents pertaining to such preparation, filing, prosecution or maintenance, including filings and correspondence with patent authorities, in a timely manner, so as to give CeNeS an opportunity to comment thereon and Acorda shall use good faith efforts to accommodate any such comments.

4.2 Ludwig, CeNeS, and Acorda shall cooperate fully in the preparation, filing, prosecution and maintenance of Patent Rights and of all patents and patent applications licensed to Acorda hereunder, executing all papers and instruments or requiring members of Ludwig and/or CeNeS to execute such papers and instruments so as to enable Acorda to apply for, to prosecute and to maintain patent applications and patents in Ludwig's name in any country. Each party shall provide to the other prompt notice as to all matters which come to its attention

and which may affect the preparation, filing, prosecution or maintenance of any such patent applications or patents.

4.3 Acorda may elect to surrender its rights under the Patent Rights on a patent-by-patent basis in any country upon sixty (60) days written notice to CeNeS. CeNeS may elect thereafter to continue prosecution and maintenance of such patents at its own expense.

### **Part 5 - Patent Infringement**

5.1 Enforcement by Acorda. If either CeNeS or Acorda becomes aware of a product made, used or sold in the Territory, or any other activities, which it believes infringes a Valid Claim, the party obtaining such knowledge shall promptly advise the other party of all relevant facts and circumstances pertaining to the potential infringement. Acorda shall have the first right, but not the obligation, to enforce any patent rights against such infringement, at its own expense. CeNeS and Ludwig shall cooperate with Acorda in such effort, at Acorda's expense, including being joined as a party to such action, if necessary. Any damages or costs recovered in connection with any action filed by Acorda hereunder which exceed Acorda's out-of-pocket costs and expenses of litigation, shall be deemed to be Net Sales of Protein Products in the fiscal quarter received by Acorda, and royalties shall be payable by Acorda to CeNeS thereon in accordance with the terms of this Agreement.

5.2 Backup Enforcement Right by CeNeS. If Acorda fails within one hundred twenty (120) days after receiving notice from CeNeS of a potential infringement, or providing CeNeS with notice of such infringement, to either (a) terminate such infringement or (b) institute an action to prevent continuation thereof and, thereafter to prosecute such action diligently, or if Acorda notifies CeNeS that it does not plan to terminate the infringement or institute such action, then CeNeS shall have the right to do so at its own expense; provided however, that CeNeS first

consults with Acorda and gives due consideration to Acorda's reasons for not instituting actions to terminate or otherwise prevent continuation of such infringement. If CeNeS decides to pursue such infringement, Acorda shall cooperate with CeNeS in such effort including being joined as a party to such action if necessary. CeNeS shall be entitled to retain all damages or costs awarded to CeNeS in such action.

5.3 In the event that Acorda, its Affiliate or Sublicensee is sued by a third party charging infringement of a patent resulting from the manufacture, use or sale by Acorda, its Affiliate or Sublicensee of a Licensed Product, Acorda shall promptly notify CeNeS. During the period in which any such suit is pending, Acorda shall have the right to apply up to fifty percent (50%) of the royalties due CeNeS against Acorda's litigation expenses of any such suit.

#### **Part 6 - Diligence**

6.1 Acorda agrees to use all reasonable efforts to effect introduction of Licensed Products into the commercial market as soon as practicable, consistent with sound and reasonable business practices and judgment.

#### **Part 7 - Indemnification and Insurance**

7.1 Acorda hereby indemnifies CeNeS, Ludwig and their respective directors, officers, employees and agents (collectively, the "**CeNeS Indemnitees**") and agrees to be solely responsible and to hold CeNeS Indemnitees harmless from any third party claim, demands, suits or causes of action, including all judgments, damages, and costs (including reasonable attorneys' fees) resulting therefrom, arising out of the use, manufacture, sale, storage or advertising of any Licensed Product except to the extent of such judgments, damages and costs that arise from the negligence or willful misconduct of CeNeS Indemnitees.

7.2 CeNeS hereby indemnifies Acorda, its Affiliates, directors, officers, agents, contractors, Sublicensees and employees (collectively, the “**Acorda Indemnitees**”) and agrees to be solely responsible and to hold Acorda Indemnitees harmless from any third party claim demands, suits or causes of action, including all judgments, damages, and costs (including reasonable attorneys’ fees) resulting therefrom, arising out of any breach of Section 8.1 except to the extent of such judgments, damages and costs that arise from the negligence or willful misconduct of Acorda Indemnitees.

7.3 To be eligible to be indemnified hereunder, the indemnified party shall provide the indemnifying party with prompt notice of the claim giving rise to the indemnification obligation pursuant to this Part 7 and the exclusive ability to defend (with the reasonable cooperation of the indemnified party) or settle any such claim; *provided, however*, that the indemnifying party shall not enter into any settlement for damages other than monetary damages without the indemnified party’s written consent, such consent not to be unreasonably withheld or delayed. The indemnified party shall have the right to participate, at its own expense and with counsel of its choice, in the defense of any claim or suit that has been assumed by the indemnifying party.

7.4 Prior to commencing human use of any Licensed Product hereunder, Acorda shall obtain and maintain thereafter comprehensive general liability insurance (to include advertisers’ liability and product liability) written by a reputable insurer or insurers approved by CeNeS and shall list CeNeS as an additional named insured thereunder and shall require thirty (30) days written notice to be given to CeNeS prior to any cancellation or material change thereof. The limits for such insurance shall not be less than ten million dollars (USD 10,000,000) per occurrence for personal injury and property damage, adjusted for inflation every year based on

the U.S. Consumer Price Index in effect on the first day of such year. Acorda shall provide CeNeS with certificates of insurance evidencing the same upon written request by CeNeS.

#### **Part 8 - Representations and Warranties**

8.1        CeNeS Representations and Warranties. CeNeS represents and warrants that:

(a)        its obligations under this Agreement are not in conflict with any prior commitments or obligations to any third party; that it has all requisite power and authority to enter into this Agreement; and that all corporate action necessary to authorize its execution and delivery of this Agreement has been duly taken;

(b)        it has the right to grant the rights granted in this Agreement and perform the obligations set forth herein;

(c)        it and its Affiliates have not granted to any third party any license, option or other rights under the Patent Rights, and to its knowledge, the Ludwig License is in full force and effect;

(d)        to its knowledge, there are no facts or circumstance which would render any of the Patent Rights invalid or unenforceable;

(e)        to its knowledge, there is no interference action, opposition, reissue or reexamination proceeding, or any intellectual property litigation pending before any patent office or court concerning any of the Patent Rights; and

(f)        Cambridge Neuroscience Research, Inc. has assigned all its rights and obligations in the Ludwig Agreement to CeNeS.

8.2        Acorda Representations and Warranties. Acorda represents and warrants that its obligations under this Agreement are not in conflict with any prior commitments or obligations to any third party; that it has all requisite power and authority to enter into this Agreement; and

that all corporate action necessary to authorize its execution and delivery of this Agreement has been duly taken.

#### **Part 9 - Term and Early Termination**

9.1 Unless sooner terminated as herein provided, this Agreement shall continue in full force and effect commencing on the Effective date of this Agreement and continuing until the later of fifteen (15) years thereafter or the expiration of the last-to-expire Valid Claim in the Patent Rights.

9.2 Acorda may terminate this Agreement at any time for any reason, upon thirty (30) days prior written notice to CeNeS.

9.3 (a) A party may terminate this Agreement and the license herein granted upon the breach of any material obligation herein by the other party upon sixty (60) days written notice; provided that if during such sixty (60) day period the party so notified cures such material breach, then this Agreement shall continue in full force and effect.

(b) If this Agreement is terminated as provided in Paragraphs 9.2 or 9.3(a), Acorda shall promptly make an accounting to CeNeS of the inventory of Licensed Products which it and its Affiliates and Sublicensees have on hand as of the effective date of such termination, if applicable. Acorda, its Affiliates and Sublicensees shall then have the right, for a period of six (6) months after said termination, to sell such inventory provided that the Net Sales thereof shall be subject to the royalty rates payable to CeNeS as set forth above.

9.4 The license to Acorda set forth in Section 2.1 shall continue after any termination or expiration of this Agreement as set forth in this Section 9.4. If this Agreement expires pursuant to Section 9.1, then Acorda shall thereafter retain a nonexclusive, perpetual, royalty-free, worldwide license, with the full right to sublicense, under the Patent Rights and Licensed

Know-How to practice such technology and rights for all purposes. If this Agreement is terminated by Acorda pursuant to Section 9.3, then Acorda, in its sole discretion, may elect to retain the exclusive license granted in Section 2.1, subject to the payment of the royalties otherwise due under Section 3.2.

#### **Part 10 - Confidentiality**

10.1 Treatment of Confidential Information. Except as otherwise provided hereunder, during the term of this Agreement and for a period of five (5) years thereafter:

(a) CeNeS, its Affiliates and Sublicensees shall retain in confidence and use only for purposes of this Agreement, any written information and data supplied by Acorda to CeNeS under this Agreement and marked as proprietary or confidential; and

(b) Acorda shall retain in confidence and use only for purposes of this Agreement, any written information and data supplied by CeNeS to Acorda under this Agreement and marked as proprietary or confidential.

For purposes of this Agreement, all such information and data which a party is obligated to retain in confidence shall be called “**Information**.” Any written information, materials or data relating to GGF-2 disclosed by one party to the other party pursuant to the License Option Agreement and the Confidentiality Agreement entered into as of July 23, 2001 shall be deemed Information under this Agreement.

10.2 Permitted Disclosure. To the extent that it is reasonably necessary to fulfill its obligations or exercise its rights under this Agreement, or any rights which survive termination or expiration hereof, each party may disclose Information to its Affiliates, sublicensees, consultants, outside contractors and clinical investigators on condition that such entities or persons agree:

(a) to keep the Information confidential for at least the same time periods and to the same extent as each party is required to keep the Information confidential and

(b) to use the Information only for such purposes as such parties are authorized to use the Information.

Each party, its Affiliates or sublicensees may disclose Information to regulatory authorities to the extent that such disclosure is necessary for the prosecution and enforcement of patents, authorizations to conduct clinical trials or commercialization of Licensed Products, provided that such party is otherwise entitled to engage in such activities under this Agreement. Each party, its Affiliates or sublicensees may disclose Information to the government or a court of competent jurisdiction, provided that such disclosing party (a) provides the other party with adequate notice of the required disclosure, (b) cooperates with the other party's efforts to protect its Information with respect to such disclosure and (c) takes all reasonable measures requested by the other party to challenge or to modify the scope of such required disclosure. CeNeS may disclose Information to Ludwig to the extent such disclosure is required pursuant to CeNeS' obligations under the Ludwig Agreement.

10.3 The obligation under Section 10.1 not to use or disclose Information shall not apply to any part of such Information that the recipient party can establish by competent written proof:

(a) is or becomes patented, published or otherwise part of the public domain, other than by unauthorized acts of the party obligated not to disclose such Information (for purposes of this Part 10 (the "**Receiving Party**"), its Affiliates or Sublicensees in contravention of this Agreement;

(b) is disclosed to the Receiving Party, its Affiliates or Sublicensees by a third party provided that such Information was not obtained by such third party directly or indirectly from the other party under this Agreement;

(c) prior to disclosure under this Agreement, was already in the possession of the Receiving Party, its Affiliates or Sublicensees, provided that such Information was not obtained directly or indirectly from the other party under this Agreement;

(d) results from the research and development by the Receiving Party, its Affiliates or Sublicensees, independent of disclosures from the other party of this Agreement, provided that the persons developing such information have not had exposure to the Information received from the disclosing party; or

(e) CeNeS and Acorda agree in writing may be disclosed.

10.4 Confidential Nature of the Terms of Agreement. Except as expressly provided herein, CeNeS and Acorda each agrees not to disclose any terms of this Agreement to any third party without the consent of the other party; provided, however, that disclosures may be made as required by securities or other applicable laws, or to actual or prospective investors or corporate partners, or to a party's accountants, attorneys, and other professional advisors who agree to appropriate confidentiality provisions to protect such terms from disclosure or improper use.

#### **Part 11 - General Provisions**

11.1 Except as required by law, neither CeNeS nor Acorda shall originate any publicity, news release, or other public announcement, written or oral, whether to the public press, to stockholders, or otherwise, relating to this Agreement to any amendment thereto or to performance hereunder or the existence of an arrangement between the parties without the prior written approval of the other party, not to be unreasonably withheld; provided that, no such

consent shall be required for non-public communications between Acorda and its current, or potential stockholders, investors, acquiring parties, merger partners or Sublicensees. Acorda shall not use the name Ludwig, or CeNeS (or any variant thereof) or any related organization in any advertising, packaging (except for customary technical references) or other promotional material in connection with the sale of Licensed Products referred to in this Agreement.

11.2 Acorda acknowledges that it has certain duties and obligations under Part 379 of the Export Administration Regulations of the U.S. Department of Commerce (as presently promulgated or hereafter modified or amended) concerning the export and reexport of technical data. Acorda will be solely responsible for any breach of such Regulations by Acorda, its Affiliates or Sublicensees and will defend and hold Indemnitees harmless in the event of a suit or action involving any such breach.

11.3 Neither party may assign or transfer this Agreement or any rights or obligations hereunder without the prior written consent of the other, such consent not to be unreasonably withheld, and except that a party may make such an assignment without the other party's consent to an Affiliate or to a successor to all, or substantially all, of the business and assets to which this Agreement relates of such party, whether in a merger, sale of stock, sale of assets or other transaction of the division or divisions of Acorda involved in the development and sale of Licensed Products. Any permitted successor or assignee of rights and/or obligations hereunder shall, in a writing to the other party, expressly assume performance of such rights and/or obligations. Any permitted assignment shall be binding on the successor of the assigning party.

11.4 All notices required to be given by one party to the other hereunder shall be sufficient if signed by such party (or such party's attorney) and either: (a) delivered in person; (b) mailed certified mail, postage prepaid, return receipt requested; or (b) faxed to the other party

provided that the sender receives acknowledgement that such notice has been received by the party to be notified and promptly sends the original by ordinary mail; in any event, to the following addresses:

If to Acorda:

Acorda Therapeutics, Inc.  
15 Skyline Drive  
Hawthorne, NY 10532  
Attn: President and Chief Executive Officer

with a copy to:

Acorda Therapeutics, Inc.  
15 Skyline Drive  
Hawthorne, NY 10532  
Attn: Harold Safferstein, Vice President, Business Development

If to CeNeS:

CeNeS Pharmaceuticals plc  
Compass House  
Vision Park  
Clovers Way  
Histon, Cambridge CI4 9ZR  
England  
Attn: Neil Clark, Chief Operating Officer and Finance Director

By such notice either party may change their address for future notices. Notices delivered in person shall be deemed given on the date delivered. Notices sent by fax shall be deemed given on the date faxed. Notices mailed shall be deemed given two (2) days after the date postmarked on the envelope.

11.5 This Agreement constitutes the entire agreement between the parties and supersedes all written or oral prior agreements or understandings with respect to the subject matter hereof except that any confidential information disclosed pursuant to the License Option

Agreement shall be deemed Information of this Agreement. No variation or modification of the terms or provisions of this Agreement shall be valid unless in writing and signed by the parties hereto.

11.6 No right or license is granted by CeNeS under this Agreement to Acorda, or by Acorda to CeNeS, either expressly or by implication, except those specifically set forth herein.

11.7 Waiver by Acorda or CeNeS of any single default or breach or succession of defaults or breaches by the other shall not deprive CeNeS or Acorda of any right to terminate this Agreement arising out of any subsequent default or breach nor shall it be construed as a waiver of either party's rights thereafter to enforce each and every provision of this Agreement.

11.8 All matters affecting the interpretation, validity, and performance of this Agreement shall be governed by the laws of the State of New York applicable to agreements made and to be performed wholly within New York, but the scope and validity of Patent Rights shall be governed by the applicable laws of the country granting the patent in question.

11.9 Acorda's relationship with CeNeS shall be that of a licensee only. Neither party shall be considered to be an employee or agent of the other, nor shall this Agreement constitute, create or in any way be interpreted as a joint venture, partnership or formal business organization of any kind. In that respect, neither party shall have the authority to execute any agreement on behalf of the other party, nor shall either party have any authority to negotiate any agreement, except as the other party may expressly direct in writing.

11.10 Parts 7, 8, and 10 and Sections 9.3(b), 9.4 and 11.10 shall survive termination of this Agreement for any reason.

11.11 This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

11.12 The captions herein are solely for convenience of reference and shall not affect the construction or interpretation of this Agreement.

IN WITNESS WHEREOF, CeNeS and Acorda have caused this Agreement to be executed in duplicate by their respective duty authorized officers.

CeNeS PHARMACEUTICALS, PLC

By: /s/ Neil Clark

Print Name: Neil Clark

Title: Finance Director

ACORDA THERAPEUTICS, INC.

By: /s/ Harold T. Safferstein

Print Name: Harold T. Safferstein

Title: VP Business Development

**SCHEDULE A****PATENT RIGHTS****Granted Patent List**

Matter Number	Country	Patent Number	Grant Date	Filing Date	Status	Inventors
04585-002AU5	Australia	688270	02-Jul-1998	29-Jun-1993	Granted	Andrew D.J. Goodearl et al.
Title: GLIAL MITOGENIC FACTORS, THEIR PREPARATION AND USE						
04585-002AU6	Australia	709968	23-Dec-1999	25-May-1995	Granted	Andrew D.J. Goodearl et al.
Title: GLIAL MITOGENIC FACTORS, THEIR PREPARATION AND USE						
04585-002AUX	Australia	703772	15-Jul-1999	09-Oct-1996	Granted	Andrew D.J. Goodearl et al.
Title: GLIAL MITOGENIC FACTORS, THEIR PREPARATION AND USE						
04585-002EP1	Europe	0579640	24-Jul-2002	03-Apr-1992	Granted	Andrew D.J. Goodearl et al.
Title: GLIAL MITOGENIC FACTORS, THEIR PREPARATION AND USE						
04585-002KR1	Korea	274305	08-Sep-2000	03-Apr-1992	Granted	Andrew D.J. Goodearl et al.
Title: GLIAL MITOGENIC FACTORS, THEIR PREPARATION AND USE						
04585-002KR5	Korea	307943	25-Aug-2001	29-Jun-1993	Granted	Andrew D.J. Goodearl et al.
Title: GLIAL MITOGENIC FACTORS, THEIR PREPARATION AND USE						
04585-002KR6	Korea	265928	09-Jun-2000	25-May-1995	Granted	Andrew D.J. Goodearl et al.
Title: GLIAL MITOGENIC FACTORS, THEIR PREPARATION AND USE						
04585-002KR7	Korea	297680	24-May-2001	25-May-1995	Granted	Andrew D.J. Goodearl et al.
Title: GLIAL MITOGENIC FACTORS, THEIR PREPARATION AND USE						
04585-002KR8	Korea	344006	28-Jun-2002	29-Jun-1993	Granted	Andrew D.J. Goodearl et al.
Title: GLIAL MITOGENIC FACTORS, THEIR PREPARATION AND USE						
04585-002PT1	Portugal	100344	02-May-1999	03-Apr-1992	Granted	Andrew D.J. Goodearl et al.
Title: GLIAL MITOGENIC FACTORS, THEIR PREPARATION AND USE						
04585-002PT5	Portugal	101297	07-Jul-1999	30-Jun-1993	Granted	Andrew D.J. Goodearl et al.
Title: GLIAL MITOGENIC FACTORS, THEIR PREPARATION AND USE						
04585-002005	United States	5,530,109	25-Jun-1996	24-Mar-1993	Granted	Andrew D.J. Goodearl et al.
Title: GLIAL MITOGENIC FACTORS, THEIR PREPARATION AND USE						
04585-002006	United States	5,716,930	10-Feb-1998	26-May-1994	Granted	Andrew D.J. Goodearl et al.
Title: GLIAL MITOGENIC FACTORS, THEIR PREPARATION AND USE						
04585-002007	United States	5,621,081	15-Apr-1997	06-Jun-1995	Granted	Andrew D.J. Goodearl et al.

Matter Number	Country	Patent Number	Grant Date	Filing Date	Status	Inventors
Title: GLIAL MITOGENIC FACTORS, THEIR PREPARATION AND USE						
04585-002009	United States	5,606,032	25-Feb-1997	06-Jun-1995	Granted	Andrew D.J. Goodearl et al.
Title: GLIAL MITOGENIC FACTORS, THEIR PREPARATION AND USE						
04585-00200A	United States	5,792,849	11-Aug-1998	06-Jun-1995	Granted	Andrew D.J. Goodearl et al.
Title: GLIAL MITOGENIC FACTORS, THEIR PREPARATION AND USE						
04585-00200G	United States	5,602,096	11-Feb-1997	06-Jun-1995	Granted	Andrew D.J. Goodearl et al.
Title: GLIAL MITOGENIC FACTORS, THEIR PREPARATION AND USE						
04585-00200J	United States	6,204,241	20-Mar-2001	22-Oct-1996	Granted	Andrew D.J. Goodearl et al.
Title: GLIAL MITOGENIC FACTORS, THEIR PREPARATION AND USE						
04585-00200L	United States	6,194,377	27-Feb-2001	22-Oct-1996	Granted	Andrew D.J. Goodearl et al.
Title: GLIAL MITOGENIC FACTORS, THEIR PREPARATION AND USE						
04585-00200P	United States	5,854,220	29-Dec-1998	22-Oct-1996	Granted	Andrew D.J. Goodearl et al.
Title: GLIAL MITOGENIC FACTORS, THEIR PREPARATION AND USE						
04585-002ZA1	South Africa	92/2001	25-Nov-1992	01-Apr-1992	Granted	Andrew D.J. Goodearl et al.
Title: GLIAL MITOGENIC FACTORS, THEIR PREPARATION AND USE						
04585-002ZA5	South Africa	93/4711	31-Aug-1994	30-Jun-1993	Granted	Andrew D.J. Goodearl et al.
Title: GLIAL MITOGENIC FACTORS, THEIR PREPARATION AND USE						
04585-039AU1	Australia	713384	16-Mar-2000	27-Mar-1996	Granted	Thomas A. Reh et al.
Title: METHODS OF TREATING DISORDERS OF THE EYE						

Matter Number	Patent Country	Grant Number	Grant Date	Filing Date	Status	Inventors
Title: USE OF NEUREGULIN AS MODULATORS OF CELLULAR COMMUNICATION						
04585-04AU1	Australia	707599	28-Oct-1999	16-Nov-1995	Granted	David I. Gwynne et al.
Title: USE OF NEUREGULIN AS MODULATORS OF CELLULAR COMMUNICATION						
04585-041001	United States	6,087,323	11-Jul-2000	17-Nov-1994	Granted	David I. Gwynne et al.
Title: USE OF NEUREGULIN AS MODULATORS OF CELLULAR COMMUNICATION						
04585-043AU2	Australia	727037	15-Mar-2001	12-Nov-1996	Granted	Mark Marchionni et al.
Title: METHODS OF TREATING DISORDERS OF NON-VISUAL SENSORY EPITHELIUM						
04585-048AU2	Australia	745324	21-Mar-2002	08-Oct-1998	Natl Phase	R. McBurney et al.
Title: THERAPEUTIC METHODS COMPRISING USE OF A NEUREGULIN						
04585-051001	United States	5,594,114	14-Jan-1997	17-Aug-1992	Granted	Andrew D.J. Goodearl et al.
Title: SCHWANN CELL MITOGENIC FACTOR, ITS PREPARATION AND USE						

**Pending Patent Application List**

Matter Number	Country	Application Number	Filing Date	Status	Inventors
04585-002CA1	Canada	2,108,199	03-Apr-1992	Pending	Andrew D.J. Goodearl et al.
Title: GLIAL MITOGENIC FACTORS, THEIR PREPARATION AND USE					
04585-002CA5	Canada	2,139,136	29-Jun-1993	Pending	Andrew D.J. Goodearl et al.
Title: GLIAL MITOGENIC FACTORS, THEIR PREPARATION AND USE					
04585-002CA6	Canada	2,191,085	25-May-1995	Pending	Andrew D.J. Goodearl et al.
Title: GLIAL MITOGENIC FACTORS, THEIR PREPARATION AND USE					
04585-002CN6	China	95 1 9320X	25-May-1995	Pending	Andrew D.J. Goodearl et al.
Title: GLIAL MITOGENIC FACTORS, THEIR PREPARATION AND USE					
04585-002EP5	Europe	93 918139.2	29-Jun-1993	Pending	Andrew D.J. Goodearl et al.
Title: GLIAL MITOGENIC FACTORS, THEIR PREPARATION AND USE					
04585-002EP6	Europe	95922145.8	25-May-1995	Pending	Andrew D.J. Goodearl et al.
Title: GLIAL MITOGENIC FACTORS, THEIR PREPARATION AND USE					
04585-002IE1	Ireland	921062	03-Apr-1992	Pending	Andrew D.J. Goodearl et al.
Title: GLIAL MITOGENIC FACTORS, THEIR PREPARATION AND USE					
04585-002MX6	Mexico	965812	25-May-1995	Pending	Andrew D.J. Goodearl et al.
Title: GLIAL MITOGENIC FACTORS, THEIR PREPARATION AND USE					
04585-002PH5	Philippines	44157	03-Apr-1992	Pending	Andrew D.J. Goodearl et al.
Title: GLIAL MITOGENIC FACTORS, THEIR PREPARATION AND USE					
04585-002008	United States	08/470,339	06-Jun-1995	Pending	Andrew D.J. Goodearl et al.
Title: GLIAL MITOGENIC FACTORS, THEIR PREPARATION AND USE					
04585-00200E	United States	08/469,549	06-Jun-1995	Pending	Andrew D.J. Goodearl et al.
Title: GLIAL MITOGENIC FACTORS, THEIR PREPARATION AND USE					
04585-00200F	United States	08/471,833	06-Jun-1995	Pending	Andrew D.J. Goodearl et al.
Title: GLIAL MITOGENIC FACTORS, THEIR PREPARATION AND USE					
04585-00200H	United States	08/472,065	06-Jun-1995	Pending	Andrew D.J. Goodearl et al.
Title: GLIAL MITOGENIC FACTORS, THEIR PREPARATION AND USE					
04585-00200I	United States	08/734,665	22-Oct-1996	Pending	Andrew D.J. Goodearl et al.
Title: GLIAL MITOGENIC FACTORS, THEIR PREPARATION AND USE					
04585-00200M	United States	08/735,010	13-May-1999	Pending	Andrew D.J. Goodearl et al.
Title: GLIAL MITOGENIC FACTORS, THEIR PREPARATION AND USE					

Matter Number	Country	Application Number	Filing Date	Status	Inventors
04585-00200N	United States	08/736,070	22-Oct-1996	Pending	Andrew D.J. Goodearl et al.
Title: GLIAL MITOGENIC FACTORS, THEIR PREPARATION AND USE					
04585-00200Q	United States	08/736,019	22-Oct-1996	Pending	Andrew D.J. Goodearl et al.
Title: GLIAL MITOGENIC FACTORS, THEIR PREPARATION AND USE					
04585-00200R	United States	08/734,592	22-Oct-1996	Pending	Andrew D.J. Goodearl et al.
Title: GLIAL MITOGENIC FACTORS, THEIR PREPARATION AND USE					
04585-002WO1	PCT	GB92/00595	03-Apr-1992	Natl Phase	Andrew D.J. Goodearl et al.
Title: GLIAL MITOGENIC FACTORS, THEIR PREPARATION AND USE					
04585-002WO5	PCT	US93/06228	29-Jun-1993	Natl Phase	Andrew D.J. Goodearl et al.
Title: GLIAL MITOGENIC FACTORS, THEIR PREPARATION AND USE					
04585-002WO6	PCT	US95/06846	25-May-1995	Natl Phase	Andrew D.J. Goodearl et al.
Title: GLIAL MITOGENIC FACTORS, THEIR PREPARATION AND USE					
04585-028001	United States	08/209,204	08-Mar-1994	Pending	Robert Sklar et al.
Title: METHODS FOR TREATING MUSCLE DISEASES AND DISORDERS					
04585-028002	United States	08/461,097	05-Jun-1995	Pending	Robert Sklar et al.
Title: METHODS FOR TREATING MUSCLE DISEASES AND DISORDERS					
04585-028004	United States	08/468,731	06-Jun-1995	Pending	Robert Sklar et al.
Title: METHODS FOR TREATING MUSCLE DISEASES AND DISORDERS					
04585-030CA1	Canada	2,162,262	06-May-1994	Pending	Robert Sklar et al.
Title: METHODS FOR TREATING MUSCLE DISEASES AND DISORDERS					
04585-030EP1	Europe	94916690.4	06-May-1994	Pending	Robert Sklar et al.
Title: METHODS FOR TREATING MUSCLE DISEASES AND DISORDERS					
04585-030JP1	Japan	525593/1994	06-May-1994	Pending	Robert Sklar et al.
Title: METHODS FOR TREATING MUSCLE DISEASES AND DISORDERS					
04585-030WO1	PCT	US94/05083	06-May-1994	Natl Phase	Robert Sklar et al.
Title: METHODS FOR TREATING MUSCLE DISEASES AND DISORDERS					
04585-039CA1	Canada	2,215,330	27-Mar-1996	Pending	Thomas A. Reh et al.
Title: METHODS OF TREATING DISORDERS OF THE EYE					
04585-039EP1	Europe	96910617.8	27-Mar-1996	Pending	Thomas A. Reh et al.
Title: METHODS OF TREATING DISORDERS OF THE EYE					
04585-039JP1	Japan	8-529635	27-Mar-1996	Pending	Thomas A. Reh et al.
Title: METHODS OF TREATING DISORDERS OF THE EYE					

Matter Number	Country	Application Number	Filing Date	Status	Inventors
04585-041CA1	Canada	2,204,850	16-Nov-1995	Pending	David I. Gwynne et al.
Title: USE OF NEUREGULIN AS MODULATORS OF CELLULAR COMMUNICATION					
04585-041EP1	Europe	95940728.9	16-Nov-1995	Pending	David I. Gwynne et al.
Title: USE OF NEUREGULIN AS MODULATORS OF CELLULAR COMMUNICATION					
04585-041JP1	Japan	8-516986	16-Nov-1995	Pending	David I. Gwynne et al.
Title: USE OF NEUREGULIN AS MODULATORS OF CELLULAR COMMUNICATION					
04585-041004	United States	09/069,784	20-Mar-2001	Pending	David I. Gwynne et al.
Title: USE OF NEUREGULIN AS MODULATORS OF CELLULAR COMMUNICATION					
04585-041005	United States	09/366,886	04-Aug-1999	Pending	David I. Gwynne et al.
Title: USE OF NEUREGULIN AS MODULATORS OF CELLULAR COMMUNICATION					
04585-041WO1	PCT	US95/14974	16-Nov-1995	Natl Phase	David I. Gwynne et al.
Title: USE OF NEUREGULIN AS MODULATORS OF CELLULAR COMMUNICATION					
04585-043CA2	Canada	2,237,400	12-Nov-1996	Pending	Mark Marchionni et al..
Title: METHODS OF TREATING DISORDERS OF NON-VISUAL SENSORY EPITHELIA					
04585-043EP2	Europe	96940360.9	12-Nov-1996	Pending	Mark Marchionni et al..
Title: METHODS OF TREATING DISORDERS OF NON-VISUAL SENSORY EPITHELIA					
04585-043JP2	Japan	518966/97	12-Nov-1996	Pending	Mark Marchionni et al..
Title: METHODS OF TREATING DISORDERS OF NON-VISUAL SENSORY EPITHELIA					
04585-043WO2	PCT	US96/18031	12-Nov-1996	Natl Phase	Mark Marchionni et al..
Title: METHODS OF TREATING DISORDERS OF NON-VISUAL SENSORY EPITHELIA					
04585-044AU2	Australia	49744/00	20-Apr-2000	Natl Phase	Mark Marchionni et al..
Title: METHODS OF TREATING CONGESTIVE HEART FAILURE					
04585-044CA2	Canada	2,368,357	20-Apr-2000	Natl Phase	Mark Marchionni et al..
Title: METHODS OF TREATING CONGESTIVE HEART FAILURE					
04585-044EP2	Europe	00931938.5	20-Apr-2000	Natl Phase	Mark Marchionni et al..
Title: METHODS OF TREATING CONGESTIVE HEART FAILURE					
04585-044JP2	Japan	2000-613391	20-Apr-2000	Natl Phase	Mark Marchionni et al..
Title: METHODS OF TREATING CONGESTIVE HEART FAILURE					
04585-044KR2	Korea	2001-7013409	20-Apr-2000	Natl Phase	Mark Marchionni et al..
Title: METHODS OF TREATING CONGESTIVE HEART FAILURE					
04585-044001	United States	09/298,121	23-Apr-2000	Pending	Mark Marchionni et al..
Title: METHODS OF TREATING CONGESTIVE HEART FAILURE					

Matter Number	Country	Application Number	Filing Date	Status	Inventors
04585-044WO2 Title: METHODS OF TREATING CONGESTIVE HEART FAILURE	PCT	US00/10664	20-Apr-2000	Published	Mark Marchionni et al..
04585-048CA2 Title: THERAPEUTIC METHODS COMPRISING USE OF NEUREGULIN	Canada	2,306,228	08-Oct-1998	Natl Phase	R. McBurney et al.
04585-048EP2 Title: THERAPEUTIC METHODS COMPRISING USE OF NEUREGULIN	Europe	98949803.5	08-Oct-1998	Natl Phase	R. McBurney et al.
04585-048JP2 Title: THERAPEUTIC METHODS COMPRISING USE OF NEUREGULIN	Japan	2000-515608	08-Oct-1998	Natl Phase	R. McBurney et al.
04585-048KR2 Title: THERAPEUTIC METHODS COMPRISING USE OF NEUREGULIN	Korea	2000-7003972	08-Oct-1998	Natl Phase	R. McBurney et al.
04585-048002 Title: THERAPEUTIC METHODS COMPRISING USE OF NEUREGULIN	United States	09/530,884	29-Aug-2000	Natl Phase	R. McBurney et al.
04585-048WO2 Title: THERAPEUTIC METHODS COMPRISING USE OF NEUREGULIN	PCT	US98/21349	18-Oct-1998	Pending	R. McBurney et al.

**Exhibit 10.17**

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

**LICENSE AGREEMENT**

This License Agreement (the "AGREEMENT") is entered into this 12th day of November, 2002 (the "EFFECTIVE DATE"), by and between CeNes Pharmaceuticals, plc, a corporation organized and existing under the laws of the United Kingdom and having a principal place of business at Compass House, Vision Park, Chivers Way, Histon, Cambridge CB4 9ZR, England (hereinafter "CeNeS") and Acorda Therapeutics, Inc., a corporation organized and existing under the laws of the State of Delaware and having a principal place of business at 15 Skyline Drive, Hawthorne, NY 10532 (hereinafter "Acorda" or "LICENSEE").

WHEREAS, CeNeS, by its acquisition of Cambridge NeuroScience, Inc., has exclusive rights under that certain license agreement, as amended, (the "Harvard License") by and between Cambridge NeuroScience, Inc. and President and Fellows of Harvard College ("Harvard"), acting on its behalf and, pursuant to an inter-institutional agreement (the "Inter-Institutional Agreement"), acting on behalf of the Leland Stanford Junior College ("STANFORD") pursuant to which Harvard licensed certain rights to Cambridge NeuroScience, Inc.;

WHEREAS, CeNeS and Acorda are parties to that certain license option agreement, as amended, pursuant to which CeNeS granted an option to Acorda to, among other things, obtain a sublicense of the rights granted by Harvard to Cambridge NeuroScience, Inc. pursuant and subject to the Harvard License (the "LICENSE OPTION AGREEMENT")

WHEREAS, Acorda desires to exercise such option and to acquire a sublicense of such rights as set forth herein; and

WHEREAS, CeNeS desires to grant a sublicense of such rights as set forth herein.

NOW THEREFORE, in consideration of the foregoing premises and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

**ARTICLE I**  
**DEFINITIONS**

As used in this AGREEMENT, the terms below shall have the following meanings:

- 1.1     "AFFILIATE" means any corporation, company, partnership, joint venture and/or firm that controls, is controlled by, or is under common control with either party. As used in this Paragraph, the term "control" means (a) in the case of corporate entities, direct or indirect ownership of at least fifty percent (50%) of the stock or shares having the right to vote for the election of directors, and (b) in the case of non-corporate entities, direct or indirect ownership of at least fifty percent (50%)



- of the equity interest with the power to direct the management policies of such non-corporate entities.
- 1.2     “BIOLOGICAL MATERIALS” means the materials identified in Appendix B, attached hereto, together with any progeny, mutants, or derivatives thereof which are either supplied by CeNeS or are created by LICENSEE and are covered by a VALID CLAIM.
- 1.3     “IND” means an Investigational New Drug application as defined in the US. Food, Drug and Cosmetics Act and the regulations promulgated thereunder.
- 1.4     “LICENSED KNOW-HOW” means all unpatented know-how, trade secrets, information, data, methods, materials, techniques, reagents, cell lines, protein sequences or segments, and monoclonal antibodies, including without limitation, materials as described generally in Appendix C hereto, owned or controlled by CeNeS at any time during the term of the AGREEMENT that is necessary or useful to practice the PATENT RIGHTS or to research, develop, make, use or sell LICENSED PRODUCTS.
- 1.5     “LICENSED PRODUCTS” means: (a) PROTEIN PRODUCTS and NON-PROTEIN PRODUCTS that are covered by one or more VALID CLAIM(S) under the PATENT RIGHTS and (b) PROTEIN PRODUCTS and NON-PROTEIN PRODUCTS that incorporate some portion of BIOLOGICAL MATERIALS.
- 1.6     “NDA” means a New Drug Application as defined in the U.S. Food, Drug and Cosmetics Act and the regulations promulgated thereunder.
- 1.7     “NET SALES” means the amount billed, invoiced, or received (whichever occurs first) for SALES, leases or other transfers of LICENSED PRODUCTS, less:
- (a)     customary trade, quantity and cash discounts or rebates and non-affiliated brokers’ or agents’ commissions actually allowed and taken;
  - (b)     amounts repaid or credited by reason of rejection, recall or return;
  - (c)     to the extent separately stated on purchase orders, invoices, or other documents of sale, tax levied on and/or other governmental charges made as to production, sale, transportation, delivery or use and paid by LICENSEE or a SUBLICENSEE; and
  - (d)     reasonable charges for freight, packaging and insurance costs incurred in the delivery of transportation or LICENSED PRODUCTS provided by third parties, if separately stated.
- NET SALES also includes the fair market value of any non-cash consideration received by LICENSEE or SUBLICENSEES for the SALE, lease, or transfer of LICENSED PRODUCTS.

- 1.8     “NON-COMMERCIAL RESEARCH PURPOSES” means the use of PATENT RIGHTS and/or BIOLOGICAL MATERIALS for academic research or other not-for-profit scholarly purposes which are undertaken at a non-profit or governmental institution that does not use the PATENT RIGHTS and/or BIOLOGICAL MATERIALS in the production of manufacture of products for sale or the performance of services for a fee. Such use shall not include (i) the right to use the subject matter of the PATENT RIGHTS in the production or manufacture of products for sale or for the performance of services for a fee, or (ii) the right to use the subject matter of the PATENT RIGHTS pursuant to a research funding or other agreement or collaboration with a third party entity as a consequence of which such third party entity is granted rights to commercialize products or services under the PATENT RIGHTS.
- 1.9     “NON-PROTEIN PRODUCTS” means products that are discovered, identified or developed through the use of material that is claimed or covered by a VALID CLAIM in the PATENT RIGHTS, as a target in a screening tool or otherwise, exclusive of PROTEIN PRODUCTS.
- 1.10    “PATENT RIGHTS” means the patents and patent applications listed on Appendix A attached hereto, including without limitation United States Serial No. 08/525,864, filed September 9, 1995, now United States Patent No. 5,912,326, along with the inventions described and/or claimed therein, and any divisionals, continuations, continuations-in-part (to the extent that a claim of such continuation-in-part is entitled to the priority date of at least one of the patents, applications, or disclosures identified in Appendix A), patents issuing thereon and reissues and reexaminations thereof, and any and all foreign patents and patent applications corresponding thereto, all to the extent that Harvard and/or STANFORD has an ownership or an interest in such PATENT RIGHTS.
- 1.11    “PROCEEDS” means the royalties actually received by Acorda from its SUBLICENSEES for NET SALES of LICENSED PRODUCTS that are NON-PROTEIN PRODUCTS.
- 1.12    “PROTEIN PRODUCT” means a product that is in whole or in part, composed of one or more proteins encoded by the growth factor gene *nrg -2*, or a fragment thereof, in whatever form including mutants, analogues, homologues or derivative forms thereof, that is covered by a VALID CLAIM in the PATENT RIGHTS.
- 1.13    “PUBLIC LAWS” means the US laws referred to as “Public Law 96-517” and “Public Law 98-620” and includes all amendments to such statutes.
- 1.14    “SOLD” and “SALE” means the sale, transfer, exchange or other commercial disposition of LICENSED PRODUCTS by LICENSEE, its AFFILIATES or SUBLICENSEES. In case of doubt, SALES of LICENSED PRODUCTS shall be deemed consummated no later than receipt of payment from a third party for the applicable transaction involving such LICENSED PRODUCT.

- 1.15 “SUBLICENSE” means a grant by LICENSEE, either directly or indirectly (i.e., through multiple tiers of sublicenses) to a third party of sublicense to practice any of the rights granted to LICENSEE hereunder in accordance with this AGREEMENT. Such third party shall be referred to as a “SUBLICENSEE” under this AGREEMENT.
- 1.16 “TERRITORY” means all countries and territories worldwide.
- 1.17 “VALID CLAIM” means (a) a pending claim of a patent application within the PATENT RIGHTS, which (i) has been pending under examination for less than seven (7) years, (ii) has been asserted in good faith, and (iii) has not been abandoned or finally rejected without the possibility of appeal or refile; or (b) a claim of an issued or granted and unexpired patent within the PATENT RIGHTS, which has not been held unenforceable unpatentable or invalid by a decision of a court or governmental body of competent jurisdiction, which can no longer be appealed (i.e., within the time allowed or appeal), which has not been rendered, unenforceable through disclaimer or otherwise, which has not been abandoned, or which has not been lost through an interference proceeding. A VALID CLAIM shall be defined as of each calendar half year ending June 30 and December 31.

## ARTICLE II

### Grant of Rights

- 2.1 CeNeS hereby grants to LICENSEE and LICENSEE accepts, subject to the terms and conditions hereof, an exclusive sublicensee under the PATENT RIGHTS and LICENSED KNOW-HOW in the TERRITORY to make and have made, use and have used, sell, offer for sale, have sold and import LICENSED PRODUCTS for the life of the PATENT RIGHTS. Such sublicense shall include the right to grant further sublicenses through multiple tiers of sublicenses.
- 2.2 The granting and exercise of this license is subject to the following conditions:
- (a) Harvard’s “Statement of Policy in Regard to Inventions, Patents and Copyrights,” dated August 10, 1998 the PUBLIC LAWS, the Harvard’s obligations under the sponsored research agreement(s) referenced as Grant Nos. EY08397 and NS14506 from the National Institutes of Health. Any right granted in this AGREEMENT greater than that permitted under the PUBLIC LAWS shall be subject to modification as may be required to conform to the provisions of those statutes.
  - (b) Harvard’s reservation of the right to make and use, and to grant to not-for-profit third parties, non-exclusive licenses to use the subject matter described and claimed in the PATENT RIGHTS solely where the rights conferred by such non-exclusive license are explicitly limited to use that is for NON-COMMERCIAL RESEARCH PURPOSES, *provided, that*, in all such non-exclusive licenses granted under this paragraph 2.2(b),

Harvard shall include such limitation of use as provided in subparagraphs 2.9(i) and 2.9(ii) of the Harvard License, as amended.

- (c) LICENSEE shall use its best efforts to bring the subject matter of this AGREEMENT into commercial use as quickly as is reasonably possible. This AGREEMENT is subject and subordinate to the terms and conditions of the Harvard License.
  - (d) For as long as the sublicense rights granted in this AGREEMENT remain exclusive in the United States, LICENSEE shall cause any LICENSED PRODUCT produced for sale in the United States to be manufactured substantially in the United States.
- 2.3 All rights reserved to the United States Government and others under the Public Laws shall remain and shall in no way be affected by this AGREEMENT.

### ARTICLE III Diligence

- 3.1 LICENSEE shall, itself or through its AFFILIATES or SUBLICENSEES, use diligent efforts to effect introduction of LICENSED PRODUCTS into the commercial market as soon as practicable, consistent with sound and reasonable business practice and judgment; thereafter, until the expiration of this Agreement, LICENSEE shall endeavor to keep LICENSED PRODUCTS reasonably available to the public. LICENSEE, its AFFILIATES or SUBLICENSEES shall make such efforts in the form of the actions (a) - (d) of this Section 3.1 (hereinafter referred to as "Diligence Milestones").
- (a) within twenty-four (24) months of the EFFECTIVE DATE, commence exploratory studies leading to the validation of a specific therapeutic area of use for the growth factor gene *nrg -2*, therapeutic study areas may include, but are not limited to, central nervous system indications, congestive heart failure and cardiotoxicity secondary to chemotherapy with tyrosine kinase anti-neoplastic agents, and submit to CeNeS a due diligence report describing the exploratory studies;
  - (b) within fifty-four (54) months of the EFFECTIVE DATE, file an IND for a LICENSED PRODUCT and shall provide written notice to CeNeS of such filing;
  - (c) within eighty-four (84) months of the EFFECTIVE DATE, initiate human clinical trials for a LICENSED PRODUCT and shall provide written notice to CeNeS of such initiation; and
  - (d) within one hundred twenty (120) months of the EFFECTIVE DATE, file a NDA for a LICENSED PRODUCT.

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

- 3.2 In the event of a failure by LICENSEE, its AFFILIATES or SUBLICENSEES to meet a Diligence Milestone set forth above, and LICENSEE can demonstrate to CeNeS that it has made reasonable efforts to meet such milestone, CeNeS and LICENSEE shall negotiate in good faith and agree upon a reasonable extension for such milestone; provided that such extension shall be no less than twelve (12) months. Additional extensions to the same Diligence Milestone may be granted, if needed, based upon the progress that has been made by LICENSEE to meet the unmet Diligence Milestone.

#### ARTICLE IV Royalties

- 4.1 LICENSEE shall pay to CeNes a non-refundable license royalty fee in the sum of [\*\*] within ten (10) days after execution date of this AGREEMENT.
- 4.2 (a) LICENSEE shall pay to CeNeS during the term of this AGREEMENT a royalty of [\*\*] of NET SALES of PROTEIN PRODUCTS by LICENSEE and its AFFILIATES and a royalty of [\*\*] of the NET SALES of PROTEIN PRODUCTS by each SUBLICENSEE.
- (b) LICENSEE shall pay to CeNeS during the term of this AGREEMENT a royalty of [\*\*] of NET SALES of NON-PROTEIN PRODUCTS by LICENSEE or its AFFILIATES. In the case of SUBLICENSES, LICENSEE shall pay to CeNeS [\*\*] of PROCEEDS received by LICENSEE from each such SUBLICENSEE in connection with NON-PROTEIN PRODUCTS.
- (c) The obligation to pay royalties to CeNeS under this AGREEMENT shall be imposed only once with respect to the same unit of LICENSED PRODUCT regardless of the number of pending or issued claims of the PATENT RIGHTS covering the applicable LICENSED PRODUCT or the amount of subject matter of the PATENT RIGHTS used in the development, manufacture or use thereof.
- (d) LICENSEE shall not be obligated to make any further royalty payments in a country for any LICENSED PRODUCT after the end of the period commencing on the date of the first commercial sale of the LICENSED PRODUCT in such country by LICENSEE, its AFFILIATEs or SUBLICENSEEs and ending on the date of expiration of the last VALID CLAIM of the PATENT RIGHTS covering the LICENSED PRODUCT actually used to make such LICENSED PRODUCT, in such country.
- 4.3 In the event a LICENSED PRODUCT is sold in the form of a combination product containing one or more active ingredients in addition to the LICENSED PRODUCT active ingredient (hereinafter “COMBINATION LICENSED PRODUCT”), then the applicable NET SALES for such COMBINATION

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

LICENSED PRODUCT, for purposes of calculating royalties due thereunder, will be adjusted by multiplying actual NET SALES of such COMBINATION LICENSED PRODUCT by the applicable fraction, determined as follows:

- (a) Unless Section 4.3(b), 4.3(c) or 4.3(d) applies below, the fraction A/(A+B) where A is the invoice price of the LICENSED PRODUCT, if sold separately, and B is the sum of the invoice price(s) of any other active component or components in the combination, if sold separately.
  - (b) If, on a country-by-country basis, the other active component or components in the COMBINATION LICENSED PRODUCT are not sold separately in said country, the fraction shall be A/C where A is the invoice price of the LICENSED PRODUCTS if sold separately, and C is the invoice price of the COMBINATION LICENSED PRODUCT.
  - (c) If, on country-by-country basis, the LICENSED PRODUCT is not sold separately in said country, the fraction shall be [1-(B/C)] where B is the invoice price sum of any other active components or components in the combination, if sold separately and C is the invoice price of the COMBINATION LICENSED PRODUCT.
  - (d) If, on a country-by-country basis, neither the LICENSED PRODUCT nor the other active component or components of the COMBINATION LICENSED PRODUCT is sold separately in said country, the fraction shall be negotiated in good faith by the parties with the intention of agreeing upon a fair and equitable formula that reasonably reflects the relative value contributed by the LICENSED PRODUCT to the total value of the combination in the COMBINATION LICENSED PRODUCT, as compared to the other active ingredients therein.
- 4.4 For SALES between LICENSEE and its AFFILIATEs or SUBLICENSEEs for resale, the royalty shall be paid once on the NET SALES of such resale to a third party by the AFFILIATE or SUBLICENSEE.
- 4.5 No later than January 1 of each calendar year after the EFFECTIVE DATE of this AGREEMENT, LICENSEE shall pay to CeNeS the following non-refundable license maintenance royalty and/or advance on royalties. Such payments may be credited against the royalties due for that calendar year and Royalty Reports (as defined in Section 5.3(a)) shall reflect such a credit. Such payments shall not be creditable against royalties due for any subsequent calendar year. The first three (3) of such payments shall not be creditable against milestone payments but subsequent payments thereafter may be creditable against milestone or royalty payments.

January 1, 2003	\$	[**]
January 1, 2004	\$	[**]
January 1, 2005	\$	[**]
January 1 of each additional year prior to the first to occur of (i) the termination date of this AGREEMENT; or (ii) expiration of the PATENT RIGHTS	\$	[**]

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

4.6 LICENSEE shall pay to CeNeS the following non-refundable milestone payments upon achievement by LICENSEE, an AFFILIATE or SUBLICENSEE of the milestone events indicate below:

- (a) Upon the EFFECTIVE DATE: \$[\*\*];
- (b) Upon initiation of the first human clinical trial of a LICENSED PRODUCT that is a PROTEIN PRODUCT: \$[\*\*];
- (c) Upon initiation of the first Phase III human clinical trial of a LICENSED PRODUCT that is a PROTEIN PRODUCT: \$[\*\*];
- (d) Upon filing the first New Drug Application (“NDA”) with the U.S. Food and Drug Administration for a LICENSED PRODUCT that is a PROTEIN PRODUCT: \$[\*\*];
- (e) Upon being granted the first approval to market commercially a LICENSED PRODUCT that is a PROTEIN PRODUCT in the United States: \$[\*\*]; and
- (f) Upon being granted the first approval to market commercially a LICENSED PRODUCT that is a PROTEIN PRODUCT in a country chosen from the group consisting of the United State, Canada, the United Kingdom, France, Germany, Italy, Spain, and Japan: \$[\*\*]. For avoidance of doubt, in the event the first approval to market commercially a LICENSED PRODUCT that is a PROTEIN PRODUCT occurs in the United States, then LICENSEE shall nevertheless be obligated to pay both milestones (e) and (f) for a total payment of \$[\*\*] in connection with such approval.

For clarity, should a PROTEIN PRODUCT be abandoned by LICENSEE, its AFFILIATE or SUBLICENSEE for any reason following completion of any of milestones (b) through (e) but prior to completion of milestone (f), and LICENSEE commences development of a subsequent PROTEIN PRODUCT, then LICENSEE shall resume the milestone payments for such subsequent PROTEIN PRODUCT starting at the event subsequent to the event for which a milestone payment had already been paid. Each milestone payment shall be paid only once by LICENSEE.

## ARTICLE V REPORTING

- 5.1 Diligence Milestones shall be reported according to the provisions of Section 3.1 of this AGREEMENT.
- 5.2 LICENSEE shall report to CeNeS the date of first Sale of each LICENSED PRODUCT in each country within thirty (30) days of occurrence.
- 5.3 (a) LICENSEE shall submit to CeNeS within sixty (60) days after each calendar half year ending June 30 and December 31, a royalty report (“Royalty Report”) setting forth for such half year at least the following information:
- (i) the number of LICENSED PRODUCTS sold by Licensee, its AFFILIATES And SUBLICENSEES in each country;
  - (ii) total billings for such LICENSED PRODUCTS;
  - (iii) deduction applicable to determine the NET SALES thereof;
  - (iv) the amount of NET SALES by SUBLICENSEES and PROCEEDS received by LICENSEE; and
  - (v) the amount of royalty due thereon, or, if no royalties are due to CeNeS for any reporting period, the statement that no royalties are due.

Each such Royalty Report shall be certified as correct by an officer of LICENSEE to the best of such officer’s knowledge, and shall include a detailed listing of all deductions from royalties.

- (b) LICENSEE shall pay to CeNeS with each such Royalty Report the amount of royalty due with respect to such half year. If multiple technologies are covered by the license granted thereunder, LICENSEE shall specify which PATENT RIGHTS are practiced for each LICENSED PRODUCT included in the Royalty Report.
- (c) All payments due hereunder shall be deemed received when funds are credited to CeNeS’s bank account and shall be payable by check or wire transfer in United States dollars. Conversion of foreign currency to U.S. dollars shall be made at the conversion rate existing in the United States (as reported the Wall Street Journal, Eastern Edition) on the last working day of each royalty period. No transfer, exchange, collection or other charges shall be deducted from such payments.
- (d) All such reports shall be considered trade secrets of LICENSEE, and shall be maintained in confidence by CeNeS, except solely as required by law or by the terms of the Harvard License.
- (e) Late payments shall be subject to a charge of one and one-half percent (1.5%) per month, or \$250, whichever is greater.

## ARTICLE VI Record Keeping

- 6.1 LICENSEE shall keep, and shall require its AFFILIATES and SUBLICENSEES to keep, accurate records (together with supporting documentation) of LICENSED PRODUCTS made, used or sold under this AGREEMENT, appropriate to determine the amount of royalties due to CeNeS hereunder. Such records shall be retained for at least three (3) years following the end of the reporting period to which they relate. They shall be available upon at least fifteen (15) business days' prior written notice at any reasonable time during normal business hours not more often than once each calendar quarter for examination by an independent accountant selected by CeNeS, to whom Acorda or, if applicable, its AFFILIATES or SUBLICENSEES, have no reasonable objection, for the sole purpose of verifying reports and payments hereunder. In conducting examinations pursuant to this Section, CeNeS' independent accountant shall have access to all records that CeNeS reasonably believes to be relevant to the calculation of royalties under Article IV. Such independent accountant an CeNeS shall treat as confidential and shall not use or disclose to any third party (except Harvard and STANFORD) any information acquired during the course of such examination.
- 6.2 Such examination by CeNeS's independent accountant shall be at CeNeS' expense, except that if such an examination shows an underreporting or underpayment in excess of five percent (5%) for any twelve (12) month period, then LICENSEE shall pay the cost of such examination as well as any additional sum that would have been payable to CeNeS had the LICENSEE reported correctly, plus interest on said sum at the rate of one and one-half percent (1.5%) per month. If the independent account determines that there had been an overpayment by LICENSEE, LICENSEE shall be entitled to either a refund in the amount of such overpayment or a credit against any future payments to be made by LICENSEE under this AGREEMENT.

## ARTICLE VII DOMESTIC AND FOREIGN PATENT FILING AND MAINTENANCE

- 7.1 Upon execution of this AGREEMENT, LICENSEE shall be primarily responsible for the preparation, filing, prosecution and maintenance of any and all patent applications and patents included in PATENT RIGHTS, at its expense. Notwithstanding the previous sentence, LICENSEE shall promptly furnish to CeNeS copies of all material documents pertaining to such preparation, filing, prosecution or maintenance, and CeNeS shall be given and opportunity to consult with LICENSEE as to the preparation, filing, prosecution and maintenance.
- 7.2 Harvard and LICENSEE shall cooperate fully in the preparation, filing, prosecution and maintenance of PATENT RIGHTS and of all patents and patent

applications licensed to LICENSEE hereunder, executing all papers and instruments or requiring members of Harvard and/or STANFORD to execute such papers and instruments so as to enable LICENSEE to apply for, to prosecute and to maintain patent applications and patents in Harvard's and STANFORD's name in each country. Each party shall provide to the other prompt notice as to all matters which come to its attention and which may affect the preparation, filing, prosecution or maintenance of any such patent applications or patents.

- 7.3 LICENSEE may elect to surrender its rights under the PATENT RIGHTS on a patent-by-patent basis in any country upon sixty-(60) days written notice to CeNeS.

## ARTICLE VIII ENFORCEMENT AND DEFENSE OF THE PATENT RIGHTS

- 8.1 With respect to any PATENT RIGHTS that are exclusively licensed to LICENSEE pursuant to this AGREEMENT, LICENSEE shall have the right to prosecute and defend its own name and at its own expense any infringement of a patent within PATENT RIGHTS, or any other type of litigation involving the subject matter of the PATENT RIGHTS. CeNeS agrees to notify LICENSEE promptly of each infringement of such patents of which CeNeS is or becomes aware, and of each challenge to such patents of which CeNeS is or becomes aware.
- 8.2 (a) If LICENSEE commences an action in accordance with Section 8.1 above, Harvard may to the extent permitted by law, and shall to the extent required by law so as to enable LICENSEE to enforce the exclusive rights granted to it by this AGREEMENT, join as a party in that action. Regardless of whether Harvard joins as a party, both Harvard and CeNeS shall cooperate fully with LICENSEE in connection with any such action.
- (b) If Harvard elects to join as a party pursuant to Section 8.2(a), Harvard shall jointly control the action with LICENSEE.
- (c) LICENSEE shall reimburse Harvard for any costs Harvard incurs, including reasonable attorneys' fees, as part of an action brought by LICENSEE, whether or not Harvard becomes a party to such action.
- 8.3 If LICENSEE elects to commence an action as described above, LICENSEE may deduct from its royalty payments to CeNeS with respect to the patent(s) subject to suit an amount not exceeding fifty percent (50%) of LICENSEE's expenses and costs of such action, including reasonable attorney's fees and any reimbursements provided for under Section 8.2(c); provided, however, that such reduction shall not exceed fifty percent (50%) of the total royalty due to CeNeS with respect to the patent(s) subject to suit for each calendar year. If such fifty percent (50%) of LICENSEE's expenses and costs exceeds the amount of royalties deducted by LICENSEE for any calendar year, LICENSEE may to that extent reduce the

royalties due to CeNeS from LICENSEE in succeeding calendar years, but never by more than fifty percent (50%) of the total royalty due in any one year with respect to the patent subject to suit.

- 8.4 No settlement, consent judgment or other voluntary final disposition of the suit may be entered into without the prior written consent of Harvard, and without the prior written consent of LICENSEE, which consent shall not be unreasonably withheld by either of them.
- 8.5 Recoveries or reimbursements, from actions commenced pursuant to this Article VIII shall be distributed as follows: (i) each party shall first be reimbursed for any expenses and litigation costs incurred in the action (including any reimbursement provided by LICENSEE to Harvard pursuant to Section 8.2(c) to the extent not deducted from royalties pursuant to Section 8.3) and then to reimburse CeNeS for royalties deducted by LICENSEE pursuant to in Section 8.3; (ii) as to any remaining ordinary damages, LICENSEE shall deem such remaining damages as NET SALES in the fiscal quarter receives by LICENSEE and royalties on such amount shall be payable by LICENSEE to CeNeS accordingly; and (iii) as to any remaining special or punitive damages, LICENSEE shall receive an amount equal to 50% of its external expenses incurred in the action and the remainder of such special or punitive award shall be shared equally between the parties.
- 8.6 If LICENSEE elects not to exercise its right to prosecute an infringement of the . PATENT RIGHTS pursuant to this Article VIII within one hundred twenty (120) days after notification by CeNeS pursuant to Section 8.1 of any such infringement, CeNeS may do so at its own expense, controlling such action and retaining all recoveries therefrom. Notwithstanding the foregoing, CeNeS shall first consult with LICENSEE and give due consideration to LICENSEE's reasons for not instituting actions to prosecute an infringement of the PATENT RIGHTS. If CeNeS decides to pursue such infringement, LICENSEE shall cooperate fully with CeNeS in connection with any such action.
- 8.7 If a declaratory judgment action is brought naming LICENSEE as a defendant and alleging invalidity of any of the PATENT RIGHTS, CeNeS may elect to join such action at its own expense; in all other respects such action shall be conducted as if it had been brought by LICENSEE pursuant to Sections 8.1, 8.2, 8.3 and 8.4 of this Article VIII.

## ARTICLE IX TERMINATION OF AGREEMENT

- 9.1 This AGREEMENT, unless earlier terminated as provided herein, shall remain in effect until the last patent, patent application, or claim included in PATENT RIGHTS has expired, been abandoned or been held finally rejected or invalid (the "TERM").

- 9.2 Except as provided in paragraphs 9.3(a) and 9.3(b) below, either party shall have the right to terminate this AGREEMENT if the other party defaults in the performance of a material obligation under this AGREEMENT and the default has not been remedied within ninety (90) days after the date of notice in writing of such default by the party specifying such breach and seeking termination.
- 9.3 CeNeS may terminate this AGREEMENT immediately under the following circumstances:
- (a) If LICENSEE defaults in its obligations under Sections 11.6(a) and 11.6(b), provided, that CeNeS provides written notice to LICENSEE of the default and LICENSEE fails to cure such default within thirty (30), days; or
  - (b) if CeNeS determines that the AGREEMENT should be terminated due to the failure of LICENSEE to meet a Diligence Milestone by the expiration of an extension pursuant to Section 3.2, and if, in CeNeS' reasonable judgment, a further extension pursuant to Section 3.2 would be unlikely to result in LICENSEE being able to meet such Diligence Milestone.
- 9.4 If Harvard terminates the Harvard License because CeNeS becomes insolvent, makes an assignment for the benefit of creditors, or has a petition in bankruptcy filed for or against it, Harvard shall, upon LICENSEE's written request, enter into a direct license with LICENSEE for the PATENT RIGHTS under the same terms as those in this AGREEMENT.
- 9.5 This AGREEMENT shall, at LICENSEE's written request, be assigned to Harvard upon termination of the Harvard License. CeNeS shall provide prompt written notice to LICENSEE if Harvard gives notice that it intends to terminate the Harvard License for breach, and LICENSEE may engage in actions to cure such breach to avoid such termination or else may effect an assignment of this AGREEMENT to Harvard upon termination of the Harvard License.
- 9.6 LICENSEE shall have the right to terminate this AGREEMENT upon ninety (90) days advance written notice of termination to CeNeS, such termination to be effective on the last of such ninety (90) days (the "Termination Date"). LICENSEE shall submit a final Royalty Report to CeNeS, and pay any and all amounts due hereunder, including, without limitation, all royalty payments and unreimbursed patent expenses, within thirty (30) days following the Termination Date.
- 9.7 The license to LICENSEE set forth in Section 2.1 shall continue after any termination or expiration of this AGREEMENT as set forth in this Section 9.7. If this AGREEMENT expires pursuant to Section 9.1, then LICENSEE shall thereafter retain a nonexclusive, perpetual, royalty-free, worldwide license, with the full right to sublicense, under the PATENT RIGHTS and LICENSED KNOW-HOW to practice such technology and rights for all purposes. If this

AGREEMENT is terminated by LICENSEE pursuant to Section 9.2, then LICENSEE, in its sole discretion, may elect to retain the exclusive license granted in Section 2.1, subject to the payment of the royalties otherwise due under Section 4.2.

- 9.8 Articles I and X, and Sections 2.3, 5.3(e), 9.7, 9.8, 11.1, 11.2, 11.4, 11.5, 11.7 and 11.9 of this AGREEMENT shall survive termination.

## ARTICLE X CONFIDENTIALITY

- 10.1 Treatment of Confidential Information. Except as otherwise provided hereunder, during the term of this AGREEMENT and for a period of five (5) years thereafter:

- (a) CeNeS, its AFFILIATES and SUBLICENSEES shall retain in confidence and use only for purposes of this AGREEMENT, any written information and data supplied by LICENSEE to CeNeS under this AGREEMENT and marked as proprietary or confidential; and
- (b) LICENSEE shall retain in confidence and use only for purposes of this AGREEMENT, any written information and data supplied by CeNeS to LICENSEE under this AGREEMENT and marked as proprietary or confidential.

For purposes of this AGREEMENT, all such information and data which a party is obligated to retain in confidence shall be called "**Information**." Any written information, materials or data relating to NRG-2 disclosed by one party to the other party pursuant to the LICENSE OPTION AGREEMENT and the Confidentiality Agreement entered into as of July 23, 2001 shall be deemed Information under this AGREEMENT.

- 10.2 Permitted Disclosure. To the extent that it is reasonably necessary to fulfill its obligations or exercise its rights under this AGREEMENT, or any rights which survive termination or expiration hereof, each party may disclose Information to its AFFILIATES, SUBLICENSEES, consultants, outside contractors and clinical investigators on condition that such entities or persons agree:

- (a) to keep the Information confidential for at least the same time periods and to the same extent as each party is required to keep the Information confidential and
- (b) to use the Information only for such purposes as such parties are authorized to use the Information.

Each party, its AFFILIATES or SUBLICENSEES may disclose Information to regulatory authorities to the extent that such disclosure is necessary for the prosecution and enforcement of patents, authorizations to conduct clinical trials or commercialization of LICENSED PRODUCTS, provided that such party is

otherwise entitled to engage in such activities under this AGREEMENT. Each party, its AFFILIATES or SUBLICENSEES may disclose Information to the government or a court of competent jurisdiction, provided that such disclosing party (a) provides the other party with adequate notice of the required disclosure, (b) cooperates with the other party's efforts to protect its Information with respect to such disclosure and (c) takes all reasonable measures requested by the other party to challenge or to modify the scope of such required disclosure. CeNeS may disclose Information to Harvard and Stanford to the extent such disclosure is required pursuant to CeNeS' s obligations under the Harvard License.

10.3 The obligation under Section 10.1 not to use or disclose Information shall not apply to any part of such Information that the recipient party can establish by competent written proof:

- (a) is or becomes patented, published or otherwise part of the public domain, other than by unauthorized acts of the party obligated not to disclose such Information (for purposes of this Article 10 (the " **Receiving Party** "), its AFFILIATES or SUBLICENSEES in contravention of this AGREEMENT;
- (b) is disclosed to the Receiving Party, its AFFILIATES or SUBLICENSEES by a third party provided that such Information was not obtained by such third party directly or indirectly from the other party under this AGREEMENT;
- (c) prior to disclosure under this AGREEMENT, was already in the possession of the Receiving Party, its AFFILIATES or SUBLICENSEES, provided that such Information was not obtained directly or indirectly from the other party under this AGREEMENT;
- (d) results from the research and development by the Receiving Party, its AFFILIATES or SUBLICENSEES, independent of disclosures from the other party of this AGREEMENT, provided that the persons developing such information have not had exposure to the Information received from the disclosing party; or
- (e) CeNeS and LICENSEE agree in writing may be disclosed.

10.4 Confidential Nature of the Terms of Agreement. Except as expressly provided herein, CeNeS and LICENSEE each agrees not to disclose any terms of this AGREEMENT to any third party without the consent of the other party; provided, however, that disclosures may be made as required by securities or other applicable laws, or to actual or prospective investors, corporate partners or acquirers, or to a party's accountants, attorneys, and other professional advisors who agree to appropriate confidentiality provisions to protect such terms from disclosure or improper use.

**ARTICLE XI**  
**GENERAL**

- 11.1 CeNeS Representations and Warranties. CeNeS represents and warrants that;
- (a) (a) its obligations under this AGREEMENT are not in conflict with any prior commitments or obligations to any third party; that it has all requisite power and authority to enter into this AGREEMENT; and that all corporate action necessary to authorize its execution and delivery of this AGREEMENT has been duly taken;
  - (b) it has the right to grant the rights granted in this AGREEMENT and perform the obligations set forth herein;
  - (c) it and its Affiliates have not granted to any third party any license, option or other rights under the Patent Rights and to its knowledge, the Harvard License is in full force and effect;
  - (d) to its knowledge, there are no facts or circumstance which would render any, of the Patent Rights invalid or unenforceable; and
  - (e) to its knowledge, there is no interference action, opposition, reissue or reexamination proceeding, or any intellectual property litigation pending before any patent office or court concerning any of the Patent Rights.
- 11.2 CeNeS does not warrant the validity of the PATENT RIGHTS licensed hereunder and makes no representations whatsoever with regard to the scope of the licensed PATENT RIGHTS or that such PATENT RIGHTS may be exploited by LICENSEE, an AFFILIATE or SUBLICENSEE without infringing other patents.
- 11.3 Acorda Representations and Warranties. Acorda represents and warrants that its obligations under this AGREEMENT are not in conflict with any prior commitments or obligations to any third party; that it has all requisite power and authority to enter into this AGREEMENT; and that all corporate action necessary to authorize its execution and delivery of this AGREEMENT has been duly taken.
- 11.4 CeNeS EXPRESSLY DISCLAIMS ANY AND ALL IMPLIED OR EXPRESS WARRANTIES AND MAKES NO EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF THE PATENT RIGHTS, INFORMATION SUPPLIED BY CeNeS OR LICENSED PRODUCTS CONTEMPLATED BY THIS AGREEMENT.
- 11.5 Indemnification by LICENSEE.
- (a) LICENSEE shall indemnify, defend and hold harmless CeNeS, Harvard and STANFORD and their current or former directors, governing board members, trustees, officers, faculty, medical and professional staff, employees, students, and agents and their respective successors, heirs and

assigns (collectively, the “CeNeS Indemnitees”), against any liability, damage, loss or expenses (including reasonable attorneys’ fees and expenses of litigation) incurred by or imposed upon the CeNeS Indemnitees or any of them in connection with any third party claims, suits, actions, demands or judgments arising out of any theory of product liability (including, but not limited to, actions in the form of tort, warranty, or strict liability) concerning any product, process or service made, used or sold by LICENSEE, its AFFILIATES or SUBLICENSEES pursuant to any right or license granted under this AGREEMENT.

- (b) CeNeS shall indemnify, defend and hold harmless LICENSEE, its AFFILIATES, directors, officers, agents, contractors, SUBLICENSEES and employees (collectively, the “LICENSEE Indemnitees”); against any -liability, damage, loss or expenses (including reasonable attorney’s fees and expenses of litigation) incurred by or imposed upon the LICENSEE Indemnitees or any of them in connection with (1) any third party claims, suits, actions, demands or judgments arising out of any breach of Section 11.1 by CeNeS or (ii) LICENSEE’S actions pursuant to Section 9.5.
  - (c) LICENSEE shall, at its own expense, provide attorneys reasonably acceptable to CeNeS, Harvard and STANFORD to defend against any actions brought or filed against any Indemnitee hereunder with respect to the subject of indemnity contained herein, whether or not such actions are rightfully brought.
- 11.6 (a) Beginning at the time any such product, process or service is being commercially distributed or sold (other than for the purpose of obtaining regulatory approvals) by LICENSEE, its AFFILIATE, SUBLICENSEE or agent of LICENSEE, LICENSEE shall, at its sole cost and expense, procure and maintain commercial general liability insurance in amounts not less than \$2,000,000 per incident and \$2,000,000 annual aggregate and naming the CeNeS Indemnitees as additional insureds. During clinical trials of any such product, process or service, LICENSEE shall, at its sole cost and expense, procure and maintain commercial general liability insurance in such equal or lesser amount as CeNeS, Harvard or STANFORD shall require, naming the CeNeS Indemnitees as additional insureds. Such commercial general liability insurance shall provide: (i) product liability coverage; and (ii) broad form contractual liability coverage for LICENSEE’s indemnification under this AGREEMENT. If LICENSEE elects to self-insure all or part of the limits described above (including deductibles or retentions which are in excess of \$250,000 annual aggregate) such self-insurance program must be acceptable to CeNeS, Harvard and the Risk Management Foundation of the Harvard Medical Institutions, Inc. in their sole discretion. The minimum amounts of insurance coverage required shall not be construed to create a limit of LICENSEE’s liability with respect to its indemnification under this AGREEMENT.

- (b) LICENSEE shall provide CeNeS and Harvard with written evidence of such insurance upon request of CeNeS or Harvard. LICENSEE shall provide CeNeS with written notice at least fifteen (15) days prior to the cancellation, non-renewal or material change in such insurance; if LICENSEE does not obtain replacement insurance providing comparable coverage within such fifteen (15) day period, CeNeS and/or Harvard shall have the right to terminate this AGREEMENT on written notice.
- (c) LICENSEE shall maintain such commercial general liability insurance beyond the expiration or termination of this AGREEMENT during: (i) the period that any product, process, or service, relating to, or developed pursuant to, this AGREEMENT is being commercially distributed or sold by LICENSEE, SUBLICENSEE, AFFILIATE or agent of LICENSEE; and (ii) a reasonable period after the period referred to in Subsection (c)(i) above which in no event shall be less than ten (10) years.
- 11.7 Use of Name. LICENSEE shall not use CeNeS's, Harvard's nor STANFORD's name or insignia, nor any adaptation thereof, nor the name of any of Harvard's or STANFORD's inventors, in any advertising, promotional or sales literature without the prior written approval of CeNeS, Harvard or STANFORD, respectively.
- 11.8 This AGREEMENT may not be transferred without the prior written consent of CeNeS and Harvard in each instance, which consent shall not be unreasonably withheld or delayed. The preceding sentence notwithstanding, Licensee shall have the right to transfer or assign this AGREEMENT and the rights granted hereunder in whole or in part to any person or corporation succeeding to its business as a result of sale, consolidation, reorganization, or otherwise, provided such assignee, person, or corporation shall, without delay, accept in writing the provisions of this AGREEMENT and agree to become in all material respects bound thereby in the place and stead of LICENSEE. This AGREEMENT shall be binding upon the respective successors, legal representatives and assignees of CeNeS, Harvard and of LICENSEE.
- 11.9 The interpretation and application of the provisions of this AGREEMENT shall be governed by the laws of the state of New York and the United-States of America.
- 11.10 LICENSEE shall comply with all applicable laws and regulations in connection with the exercise of its rights hereunder. In particular, it is understood and acknowledged that the transfer of certain commodities and technical data is, subject to United States laws and regulations controlling the export of such commodities and technical data, including all Export Administration Regulations of the United States Department of Commerce. These laws and regulations among other things, prohibit or require a license for the export of certain types of technical data to certain specified countries. LICENSEE hereby agrees and gives written assurance that it will comply with all United States laws and regulations

controlling the export of commodities and technical data, that it will be solely responsible for any violation of such by LICENSEE or its AFFILIATES or sublicensees, and that it will defend and hold CeNeS, Harvard and STANFORD harmless in the event of any legal action of any nature occasioned by such violation.

- 11.11 LICENSEE agrees: (i) to use reasonable efforts to obtain all regulatory approvals required for the manufacture and sale of LICENSED PRODUCTS; and (ii) to utilize appropriate patent marking on such LICENSED PRODUCTS. LICENSEE also agrees to register or record this AGREEMENT as is required by law or regulation in any country where the license is in effect.
- 11.12 Any notices to be given here under shall be sufficient if signed by the party (or, party's attorney) giving same and either: (i) delivered in person; (ii) mailed certified mail, postage prepaid, return receipt requested; or (iii) faxed to other party if the sender has evidence of successful transmission and if the sender promptly sends the original by ordinary mail, in any event to the following addresses:

If to Acorda:

Acorda Therapeutics, Inc.  
15 Skyline Drive  
Hawthorne, NY 10532  
Attn: President and Chief Executive Officer

with a copy to:

Acorda Therapeutics, Inc.  
15 Skyline Drive  
Hawthorne, NY 10532  
Attn. Harold Safferstein, Vice President, Business Development

If to CeNeS:

CeNeS Pharmaceuticals plc  
Compass House  
Vision Park  
Chivers Way  
Histon, Cambridge CB4 9ZR  
England  
Attn: Neil Clark, Chief Operating Officer and Finance Director

By such notice either party may change their address for future notices. Notices delivered in person shall be deemed given on the date delivered. Notices sent by fax shall be deemed given on the date faxed. Notices mailed shall be deemed given on the date postmarked on the envelope.

- 11.13 Should a court of competent jurisdiction later hold any provision of this AGREEMENT to be invalid, illegal, or unenforceable, and such holding is not reversed on appeal, it shall be considered severed from this AGREEMENT. All other provisions, rights and obligations shall continue without regard to the severed provision, provided that the remaining provisions of this AGREEMENT are in accordance with the intention of the parties.
- 11.14 This AGREEMENT constitutes the entire understanding between the parties and supersedes all written and prior agreements or understandings with regards to the subject matter hereof except that any confidential information disclosed pursuant to the LICENSE OPTION AGREEMENT shall be deemed Information of this AGREEMENT. Neither party shall be obligated by any condition or representation other than those expressly stated herein or as may be subsequently agreed to by the parties hereto in writing.
- 11.15 LICENSEE'S relationship with CeNeS shall be that of a licensee only. Neither party shall, be considered to be an employee or agent of the other, nor shall this Agreement constitute, create or in any way be interpreted as a joint venture, partnership or formal business organization of any kind. In that respect, neither party shall have the authority to execute any agreement on behalf of the other party, nor shall, either party have any authority to negotiate any agreement, except as the other party may expressly direct in writing.
- 11.16 This AGREEMENT maybe executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument:

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed by their duly authorized representatives.

CeNeS Pharmaceuticals PLC

Acordia Therapeutics, Inc.

By: /s/ Neil Clark

By: /s/ Harold T. Safferstein

Print Name: Neil Clark

Print Name: Harold T. Safferstein

Title: Finance Director

Title: VP Business Development

## APPENDIX A

### LAHIVE AND, COCKFIELD CASES

- US Patent Application serial number 08/525,864 filed September 8, 1995 entitled “Cerebellum-Derived Growth Factors and Uses Related Thereto”
- PCT Patent Application serial number PCT/US96/14484 filed September 9, 1996 entitled “Cerebellum-Derived Growth Factors, and Uses Related Thereto,” designating Australia, Canada, EPO, Japan and South Korea
- U.S. Patent Number 5,912,326  
Cerebellum-Derived Growth Factors  
Inventor: Han Chang  
Filed September 8, 1995  
Issued June 15, 1999
- European Patent Application Number 96 93 2981.2  
Cerebellum-Derived Growth Factors. and Uses Related Thereto  
Filed September 9, 1996
- Canadian Patent Application Number 2,228,590  
Cerebellum-Derived Growth Factors and Uses Related Thereto  
Filed September 9, 1996
- Australian Patent Application Number 71563/96  
Cerebellum-Derived Growth Factors and Uses Related Thereto  
Filed September 9, 1996
- Japanese Patent Application Serial Number 9-511448  
Cerebellum-Derived Growth Factors and Uses Related Thereto  
Filed September 9, 1996
- South Korean Patent Application Serial Number 701775/98  
Cerebellum-Derived Growth Factors and Uses. Related Thereto  
Filed September 9, 1996

### CLARK & ELBING CASES

- United States. Patent Application Serial Number 60/206,495  
nrg-Z nucleic acid Molecules, polypeptides, and diagnostic and therapeutic methods  
Filed 23-May-2000
- United States Patent Application Serial Number 09/864,675  
nrg-2 nucleic acid molecules, polypeptides, and diagnostic and therapeutic methods  
Filed May 23.2001.
- PCT Patent Application Serial Number US01/16896  
nrg-2 nucleic add molecules, polypeptides, and diagnostic and therapeutic methods  
Filed May 23 2001.

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

APPENDIX B

The following. comprise BIOLOGICAL MATERIALS supplied by Stanford:

[\*\*]

22

---

**Exhibit 10.18**

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

LICENSE AGREEMENT

BETWEEN

ACORDA THERAPEUTICS, INC.

AND

THE MAYO FOUNDATION FOR  
EDUCATION AND RESEARCH

Dated: September 8, 2000

---

## TABLE OF CONTENTS

### **1. DEFINITIONS.**

- 1.1 "Affiliate"
- 1.2 "FDA"
- 1.3 "Field"
- 1.4 "First Commercial Sale"
- 1.5 "Key Claims"
- 1.6 "Know-How"
- 1.7 "Invention"
- 1.8 "Licensed Patents"
- 1.9 "Licensed Product"
- 1.10 "Licensed Technology"
- 1.11 "Marketing Exclusivity Rights"
- 1.12 "Material Breach"
- 1.13 "Net Sales"
- 1.14 "Patent Term Extensions"
- 1.15 "Patent Term Extensions Information"
- 1.16 "Party"
- 1.17 "PLA"
- 1.18 "Regulatory Review Period"
- 1.19 "Royalty Term"
- 1.20 "Sublicensee"
- 1.21 "Termination"
- 1.22 "Territory"
- 1.23 "Valid Claim"

### **2. GRANT OF LICENSE.**

- 2.1 License Grant
- 2.2 Reserved Rights
- 2.3 Representations and Warranties.
- 2.4 Right of First Offer
- 2.5 Opportunity to Conduct Clinical Studies

### **3. PAYMENTS; ROYALTIES.**

- 3.1 Upfront Consideration Royalty.
- 3.2 Milestone Royalties for Licensed Products
- 3.3 Running Royalties for Sales of Licensed Products.
- 3.4 Third Party Royalties
- 3.5 Certain Affiliate and Sublicensee Royalties
- 3.6 Obligation to Pay Royalties
- 3.7 Royalties on Combined Products

**4. PAYMENTS AND RECORDS.**

- 4.1 Payment
- 4.2 Mode of Payment
- 4.3 Taxes
- 4.4 Records Retention
- 4.5 Audit Request

**5. DUE DILIGENCE.**

- 5.1 Diligence
- 5.2 Reports
- 5.3 Short-Form Arbitration

**6. "OWNERSHIP; PATENTS; MARKETING EXCLUSIVITY; PATENT TERM EXTENSIONS"**

- 6.1 Ownership.
- 6.2 Patent Prosecution and Maintenance.
- 6.3 Patent Enforcement.
- 6.4 Infringement Action by Third Parties.
- 6.5 Marketing Exclusivity/Patent Term Extensions

**7. PUBLICATION; CONFIDENTIALITY.**

- 7.1 Publication
- 7.2 Confidentiality; Exceptions.
- 7.3 Exceptions to Obligation
- 7.4 Confidentiality regarding Patient Information

**8. INDEMNIFICATION.**

- 8.1 Products Liability
- 8.2 MAYO Indemnification.
- 8.4 Notice; Waiver of Subrogation.

**9. TERM AND TERMINATION.**

- 9.1 Term
- 9.2 Breach
- 9.3 Insolvency or Bankruptcy
- 9.4 Termination by ACORDA
- 9.5 Right to Sell Stock on Hand
- 9.6 Effect of Termination.
- 9.7 Accrued and Surviving Rights and Obligations

**10. MISCELLANEOUS PROVISIONS.**

- 10.1 Relationship of Parties
- 10.2 Assignment
- 10.3 Further Actions

- 10.4 Force Majeure
  - 10.5 No Trademark Rights
  - 10.6 Public Announcements
  - 10.7 Notices
  - 10.8 Amendment
  - 10.9 Waiver
  - 10.10 Severability
  - 10.11 Compliance with Law
  - 10.12 Governing Law and Jurisdiction
  - 10.13 Entire Agreement of the Parties
  - 10.14 Descriptive Headings
  - 10.15 Nondisclosure
  - 10.16 Counterparts
-

**LIST OF EXHIBITS**

EXHIBIT A

EXHIBIT B

EXHIBIT C

EXHIBIT D

EXHIBIT E

## LICENSE AGREEMENT

THIS LICENSE AGREEMENT (this "Agreement") is entered into as of September 8, 2000 (the "Effective Date"), by and between Acorda Therapeutics, Inc., a Delaware corporation, having offices at 15 Skyline Drive, Hawthorne, New York 10532, ("ACORDA") and The Mayo Foundation for Medical Education and Research, a Minnesota charitable corporation located at 200 First Street SW, Rochester, Minnesota 55905 ("MAYO").

### PRELIMINARY STATEMENTS

- A. ACORDA has sponsored two research programs under the direction of Dr. Moses Rodriguez and Dr. Larry Pease, entitled (1) Preclinical Studies of a Monoclonal Antibody Designed to Promote Central Nervous Repair, and (2) Molecular Characterization of Antibody-Induced Remyelination and Isolation of Human Counterparts, (each a "Program" and collectively, the "Programs"), pursuant to two Sponsored Research Agreements between MAYO and ACORDA, dated as of October 1, 1995 and March 15, 1998, respectively, (the "Sponsored Research Agreements") which are attached hereto as Exhibit A. These Programs have related to, among other things, the therapeutic use of humanized and non-humanized antibodies for treatment of central nervous system conditions and disorders, including myelination or remyelination in conditions such as spinal cord injuries and multiple sclerosis.
- B. MAYO is the owner of certain right, title and interest to technology made or otherwise developed in performance of the Programs including certain inventions, discoveries and patents described in the Sponsored Research Agreements.
- C. MAYO has the right to grant licenses to this technology so that such technology may be utilized in the public interest, and is willing to grant a license thereunder to ACORDA.
- D. ACORDA has options, pursuant to ACORDA|MAYO Option Agreements dated as of October 1, 1995 and March 15, 1998 (the "Option Agreements"), which are attached hereto as Exhibit B, to acquire an exclusive, worldwide license to such technology and is desirous of obtaining certain rights and licenses from MAYO relating to the aforementioned technology.
- E. ACORDA wishes to exercise the options under both Option Agreements and ACORDA and MAYO now desire to provide for the license of all technology in all fields contemplated by the exercise of the options granted under both of the Option Agreements under one unified set of terms conditions, and for revised consideration, as provided under this Agreement, which shall be deemed to amend and supercede the provisions of the Option Agreements.

NOW THEREFORE, in consideration of the foregoing and of the mutual covenants contained in this Agreement, the Parties hereto agree to the provisions of the Preliminary Statements and as follows:

---

## **1. DEFINITIONS.**

As used in this Agreement, the following terms will have the meanings set forth in this Section 1 unless the context dictates otherwise.

1.1        “Affiliate” shall mean, with respect to either person, any corporation or other business entity which controls, is controlled by or is under common control with such person. For this purpose, control means the possession of the power to direct or cause the direction of the management and the policies of an entity whether through ownership directly or indirectly of fifty percent (50%) or more of the stock entitled to vote, and for non-stock organizations, the right to receive over fifty percent (50%) of the profits by contract or otherwise, or if not meeting the preceding requirement, any company owned or controlled by or owning or controlling such person at the maximum control or ownership right permitted in the country where such entity exists.

1.2        “FDA” shall mean the U.S. Food and Drug Administration, or the successor thereto.

1.3        “Field” shall mean the prevention, mitigation or treatment of nervous system disorders, diseases or injuries including, without limitation, pain, and any and all other diagnostic, therapeutic, pharmaceutical, cosmetic, medical or health care related applications.

1.4        “First Commercial Sale” shall mean, with respect to any Licensed Product, the first sale for use or consumption by the general public of such Licensed Product in any country in the Territory after all required marketing approvals have been granted, or, if such sale is otherwise permitted, by the governing health regulatory authority of such country.

1.5        “Key Claims” shall have the meaning assigned to such term in Section 3.2(a).

1.6        “Know-How” shall mean any and all technical data, information, inventions, biological materials, trade secrets, and other intellectual property, whether patentable or unpatentable, conceived or otherwise developed in the course of and in connection with the Programs, and all subsequent modifications, enhancements and improvements hereto, excluding the patent applications and patents within the Licensed Patents.

1.7        “Invention” shall mean any new and useful invention, discovery, process, improvement or other intellectual property conceived of, first reduced to practice, made or otherwise developed by MAYO, its employees or agents including Dr. Moses Rodriguez and Dr. Larry Pease, in connection with and during the term of either of the Programs and this Agreement, and during the two year period thereafter.

1.8        “Licensed Patents” shall mean, collectively:

(a)        United States Patent No. 5,591,629, (formerly Application S.N. 08/236,520, filed April 29, 1994), entitled “Monoclonal Antibodies Which Promote Central Nervous System Remyelination,” the inventions described and claimed therein, and any substitutions, extensions, renewals, divisions, patents-of-addition, continuations, continuations-in-part to the extent the claims are directed to subject matter specifically described in such patent

(including, but not limited to, all of those continuations-in-part specifically listed on Exhibit C), patents issuing thereon or reissues, extensions or supplementary protection certificates thereof, and any and all patents and patent applications throughout the Territory corresponding thereto; and

(b) All patents and patent applications, and any substitutions, extensions, renewals, divisions, patents-of-addition, continuations, continuations-in-part to the extent the claims are directed to subject matter specifically described in such patent or patent application, patents issuing thereon or reissues, re-examinations, extensions or supplementary protection certificates thereof, and any and all foreign counterparts thereto concerning any invention, technology or other intellectual property owned in whole or in part by MAYO and made, first reduced to practice or otherwise developed in connection with the Programs, whether before or after the date of this Agreement, or derivatives or analogs thereof, including any and all technology which may be subject to either of the Option Agreements.

1.9     “Licensed Product” shall mean any product or part thereof which is covered, in whole or in part, by a Valid Claim of a Licensed Patent in the country in which such product is made, used or sold, or which incorporates or utilizes Know-How.

1.10    “Licensed Technology” shall mean the Licensed Patents and the Know-How, collectively.

1.11    “Marketing Exclusivity Rights” shall mean any rights to which a Licensed Product may be eligible in addition to or in lieu of rights under the Licensed Patents including rights to exclusivity provided in 21 USC §505, 21 USC §360aa-ee, the Orphan Drug Act, the marketing exclusivity provisions of Article 8(a) of Directive 65/65/EEC Relating to Medicinal Products and any other legislation on regulations as amended from time to time in the Territory applicable to this Agreement providing for non-patent marketing exclusivity for any Licensed Product whether such legislation or regulation is operative on the Effective Date of this Agreement or becomes operative thereafter;

1.12    “Material Breach” shall mean a breach of this Agreement which is specified in this Agreement as being a material breach, and in addition, any breach of this Agreement which is so injurious to the relationship between the Parties that this Agreement should reasonably be subject to immediate Termination by the non-breaching Party.

1.13    “Net Sales” shall mean, with respect to any Licensed Product, the gross amount invoiced for such Product by ACORDA, its Affiliates and Sublicensees, to third parties, less deductions for: (i) trade, quantity and/or cash discounts, allowances and rebates (including, without limitation, promotional allowances or discounts or similar allowances) actually allowed or given; (ii) freight, postage, shipping, insurance and transportation expenses and similar charges (in each instance, if separately identified in such invoice); (iii) credits or refunds actually allowed for rejections, defects or recalls of such Licensed Product, outdated or returned Licensed Product, or because of rebates or retroactive price reductions; and (iv) sales, value-added and excise taxes, tariffs and duties, and other taxes directly related to the sale, to the extent that such items are included in the gross invoice price (but not including taxes assessed against the income derived from such sale). Such amounts shall be determined from the books and records of

ACORDA, its Affiliates or its Sublicensees, maintained in accordance with the reasonable accounting principles used by such entity, consistently applied.

1.14     “Patent Term Extensions” shall mean the interim or permanent extension of the term of any Licensed Patents or claims covered by any Licensed Patents for any Licensed Product for which MAYO may be eligible under 35 U.S.C. § 156 or any other U.S. or non-U.S. statute providing for extensions of patent terms;

1.15     “Patent Term Extensions Information” shall mean information within a non-filing Party’s possession or control which may be requested by the Party responsible for filing and prosecuting an application or petition for a Patent Term Extension, such information as may be requested by the Patent and Trademark Office and execution of all necessary documentation in connection therewith for the filing Party to make a timely and complete filing and prosecution of an application for a Patent Term Extension;

1.16     “Party” shall mean ACORDA or MAYO and, when used in the plural, shall mean ACORDA and MAYO.

1.17     “PLA” shall mean a product license application, or with respect to any product license application already filed as of the Effective Date a supplemental product license application thereto, filed with the United States FDA, or the equivalent regulatory filing required to be filed with the regulatory authorities in any other jurisdiction outside the United States.

1.18     “Regulatory Review Period” shall mean the period of time defined in 35 U.S.C. § 156(g) and applicable to any Licensed Product;

1.19     “Royalty Term” shall mean, with respect to each Product in each country in the Territory, the period commencing on the date of the First Commercial Sale of such Product and expiring on the earlier of: (a) the later of (i) the expiration of the last Key Claim covering such Product in such country, or (ii) the expiration of any exclusive approval period granted with respect to such Product under the Orphan Drug Act, 21 U.S.C. § 360aa *et. seq.*, as amended from time to time, or (iii) ten years from the First Commercial Sale, or (iv) fifteen years from the Effective Date; or (b) the Termination of this Agreement.

1.20     “Sublicensee” shall mean any non-Affiliate third party sublicensed by ACORDA to make, have made, import, use or sell any Licensed Product.

1.21     “Termination” of this Agreement shall mean the ending, expiration, rescission, or any other discontinuation of this contract for any reason whatsoever.

1.22     “Territory” shall mean the entire world.

1.23     “Valid Claim” shall mean either: (i) a claim of an issued and unexpired patent included in the Licensed Patents, which has not been held permanently revoked, unenforceable or invalid by a decision of a court or other governmental agency of competent jurisdiction, which decision is unappealable or unappealed within the time allowed for appeal, and which claim has not been admitted to be invalid or unenforceable through reissue or disclaimer or otherwise, or (ii) a pending claim of a pending patent application that is classified under Section 1.7 as

Licensed Patents, which claim (a) was filed in good faith, (b) is reasonably likely to issue, (c) has not been abandoned or finally disallowed without the possibility of appeal or refining of said application, and (d) has not been pending for a period in excess of seven (7) years from the earliest date from which the patent application was filed or claims priority in such country.

## 2. **GRANT OF LICENSE.**

2.1 **License Grant.** Subject to the terms and conditions of this Agreement, MAYO hereby grants to ACORDA, subject to any rights of the U. S. Government under 35 U.S.C. § 200 *et seq.* and all regulations promulgated pursuant thereto, the exclusive (even as to MAYO), worldwide right and license under the Licensed Technology to develop, make, have made, use, import, export, lease, offer to sell, sell, have sold and otherwise exploit Licensed Products for use in the Field in the Territory, and to grant, offer for sale and authorize sublicenses with respect to the right and license granted under this Section 2.1 to other third parties.

2.2 **Reserved Rights.** Notwithstanding the right and license granted in Section 2.1, MAYO reserves the right to use the Licensed Technology solely for purposes of education, internal research and verification of adherence to MAYO's policies regarding the responsible conduct of research, and for MAYO's • patient care, at the discretion of MAYO's physicians, conducted within MAYO's facilities located in Rochester, Minnesota, Scottsdale, Arizona and Jacksonville, Florida. MAYO may also share aliquots of antibody related to Licensed Technology with other academic institutions solely for non-commercial research purposes as ACORDA may approve in advance, provided that no antibody shall be shared which is not already subject to an issued U.S. Patent or pending U.S. patent application, and provided further, that any such other academic institution must sign a material transfer agreement in form acceptable to ACORDA, whereby such institution confirms (a) that the antibody provided is the subject of an issued or pending Patent, (b) the proprietary rights of ACORDA under this Agreement, and (c) that all rights to all commercial applications resulting from such institution's research making use of such transferred material shall belong exclusively to MAYO and be considered part of the license granted to ACORDA under this Agreement. The Parties agree that the form of material transfer agreement attached to this Agreement as Exhibit E may be used for such purpose, provided that MAYO must still obtain ACORDA's prior approval for any specific agreement and transfer in each instance. Nothing in this Section 2.2 shall permit MAYO to use the Licensed Technology to develop any product for commercial use, or give any third party such right.

## 2.3 **Representations and Warranties.**

(a) MAYO hereby represents and warrants that:

(i) It has the right to grant the right and license granted to ACORDA under this Section 2 and that (except as may be provided in that certain agreement dated January 9, 1997 between MAYO and TEVA Pharmaceutical Industries, Ltd. (the "TEVA Agreement") which purports to grant certain rights to TEVA with respect to certain research results which may or may not be considered part of the Licensed Technology licensed hereunder and is the subject of the special indemnification provided under Section 8.2 (b) of this Agreement) MAYO

has not entered into any agreement with any third party which is in conflict with the rights granted to ACORDA pursuant to this Agreement; and

(ii) It has fully disclosed to ACORDA all information in MAYO's possession or control relating to the Licensed Technology, including, without limitation, any communications with any third parties relating to any of the foregoing.

(b) **NO OTHER WARRANTIES.**

(i) Except as expressly provided in this Agreement, nothing in this Agreement shall be construed as a warranty or representation by MAYO as to: the validity or scope of any patents contained in the Licensed Technology; an obligation to bring or to prosecute actions against third parties for infringement of patent; or conferring by implication, estoppel, or otherwise any patents of MAYO.

(ii) **MAYO HAS NOT MADE AND PRESENTLY MAKES NO PROMISES, GUARANTEES, REPRESENTATIONS OR WARRANTIES OF ANY NATURE, DIRECTLY OR INDIRECTLY, EXPRESS OR IMPLIED, REGARDING THE MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SUITABILITY, DURABILITY, CONDITION, QUALITY, OR ANY OTHER CHARACTERISTIC OF THE LICENSED TECHNOLOGY. THE COMPANY TAKES THE LICENSED TECHNOLOGY "AS IS," "WITH ALL FAULTS," AND "WITH ALL DEFECTS," AND EXPRESSLY WAIVES ALL RIGHTS TO MAKE ANY CLAIM WHATSOEVER AGAINST MAYO FOR MISREPRESENTATION OR FOR BREACH OF PROMISE, GUARANTEE, OR WARRANTY OF ANY KIND RELATING TO THE LICENSED TECHNOLOGY.**

2.4 **Right of First Offer.** The Parties recognize that MAYO may continue to conduct internal research using the Licensed Technology, as it determines in its discretion. In the event that MAYO develops any other application related to the Licensed Technology but outside the scope of the license granted under this Agreement (a "New Product"), MAYO hereby grants to ACORDA a right of first offer with respect to rights for any such New Product in the Field, as follows:

(a) In the event that, at any time during the term of this Agreement, MAYO intends to offer to a third party any rights to any New Product or receives an offer from a third party to acquire any rights to any New Product, MAYO shall first offer such rights to ACORDA, in writing, on terms no less favorable to ACORDA than those to be offered to, or offered by, such third party

(b) Within 30 days after receipt of any such offer, ACORDA shall notify MAYO in writing as to whether it wishes to obtain such rights on such terms. If ACORDA provides timely notice that ACORDA wishes to obtain such rights, then the Parties shall conduct exclusive negotiations in good faith and conclude an agreement incorporating such terms within 120 days thereafter.

(c) In the event that (i) ACORDA gives MAYO notice that ACORDA does not wish to obtain such rights, or (ii) ACORDA does not respond to MAYO's notice within 30 days after receipt thereof, then MAYO shall have the unrestricted right to enter into an agreement with a third party for such rights.

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

(d) In the event that the parties enter into negotiations pursuant to Section 2.4(b), but are unable to agree upon the terms of such rights, despite the use of good faith efforts, during the 120-day period set forth in Section 2.4(b), then MAYO shall have the right, for a period of six months thereafter, to enter into an agreement with a third party for such rights on terms no more favorable to such third party than those last offered to ACORDA pursuant to this Section 2.4. In the event that MAYO wishes to enter into such an agreement on terms more favorable to such third party, MAYO shall reoffer such terms to ACORDA in accordance with this Section 2.4. MAYO's obligation to reoffer to ACORDA any particular New Product it has not licensed to a third party during the six month period contemplated in the first sentence of this Section 2.4(d) shall continue for the term of this Agreement, and if MAYO continues its internal research related to such New Product, it will disclose to ACORDA any material new information, technology, or data developed by MAYO related to the New Product to permit ACORDA to evaluate MAYO's reoffer.

2.5 Opportunity to Conduct Clinical Studies. In the event that ACORDA determines that it is desirable to conduct clinical studies in connection with development of Licensed Products using the Licensed Technology, ACORDA shall provide MAYO with the opportunity to be included as a study site for such clinical studies, provided that MAYO has the necessary expertise, and can perform such clinical study in a timely and cost efficient manner when compared to the use of a third party. MAYO acknowledges that MAYO may not serve as a major clinical trial site, when MAYO has a conflict of interest, whether actual or perceived, such as in a registrational study.

### **3. PAYMENTS; ROYALTIES.**

#### **3.1 Upfront Consideration Royalty**

(a) In partial consideration of the right and license granted to ACORDA hereunder, ACORDA shall pay MAYO a fee of [\*\*], due within thirty (30) days after the Effective Date. Such fee shall be non-refundable, and non-creditable against any other royalty or fee payable under this Agreement.

(b) In further consideration of the right and license granted to ACORDA hereunder, ACORDA acknowledges that this Agreement permits MAYO to exercise the warrants previously granted to MAYO in connection with the Option Agreement to purchase 60,000 shares of ACORDA common stock at the price of founders stock. In the event MAYO elects to exercise such warrants, ACORDA shall reimburse to MAYO the price paid by MAYO in order to exercise such warrants.

3.2 Milestone Royalties for Licensed Product s. In further consideration of the right and license granted to ACORDA hereunder, ACORDA shall pay to MAYO the following milestone payments upon the first occurrence of each event set forth below:

(a) In as much as United States Patent No. 5,591,629, as described in Section 1.8(a) has issued and contains one or more of the key claims as contemplated by a prior Option Agreement among the Parties ("Key Claims"), [\*\*], within 30 days following the Effective Date.

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

(b) [\*\*] within thirty days following the issuance of the first U.S. composition of matter Licensed Patent for a human antibody.

(c) [\*\*] within 30 days after the initiation of the first U.S. Phase II clinical trial for the first Licensed Product chosen for development ("First Licensed Product") by ACORDA or its Affiliates or Sublicensees.

(d) [\*\*] upon the approval to market for therapeutic use given by the FDA to ACORDA or its Affiliates or Sublicensees ("FDA Approval") of the First Licensed Product, which amount shall be paid in four equal installments, the first of which shall be paid within 30 days following the date of such FDA Approval and the balance of which shall be paid within 30 days after the end of the three-, six- and nine-month periods following such date.

(e) [\*\*] within 30 days after the earlier of (1) initiation of the second U.S. Phase III clinical trial for the second Licensed Product chosen for development, if any, ("Second Licensed Product") by ACORDA or its Affiliates or Sublicensees or (2) submission of a New Drug Application ("NDA") by ACORDA or its Affiliates or Sublicensees to the FDA for such Second Licensed Product.

(f) [\*\*] upon FDA Approval of the Second Licensed Product, which amount shall be paid in four equal installments, the first of which shall be paid within 30 days following the date of such FDA Approval and the balance of which shall be paid within 30 days after the end of the three-, six- and nine-month periods following such date.

(g) [\*\*] within 30 days after the earlier of (1) initiation of the second U.S. Phase III clinical trial for the third Licensed Product chosen for development, if any, ("Third Licensed Product") by ACORDA or its Affiliates or Sublicensees or (2) submission of an NDA by ACORDA or its Affiliates or Sublicensees to the FDA for such Third Licensed Product.

(h) [\*\*] upon FDA Approval of the Third Licensed Product, which amount shall be paid in four equal installments, the first of which shall be paid within 30 days following the date of such FDA Approval and the balance of which shall be paid within 30 days after the end of the three-, six- and nine-month periods following such date.

### 3.3 Running Royalties for Sales of Licensed Products .

(a) In further consideration of the right and license granted to ACORDA hereunder, ACORDA shall pay to MAYO, in connection with the sale of Licensed Products by ACORDA or its Affiliates or Sublicensees, in accordance with the following schedule and rates:

(i) With respect to the First Licensed Product, provided that such First Licensed Product is covered by a Valid Claim which contains a valid composition of matter claim in the country where it is sold the applicable royalty rates shall be

[\*\*] of the first [\*\*] of annual Net Sales; and

[\*\*] of all annual Net Sales in excess of [\*\*].

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

(ii) With respect to the Second Licensed Product, the Third Licensed Product, and each subsequent Licensed Product, provided that each such Licensed Product is covered by a Valid Claim which contains a valid composition of matter claim in the country where it is sold, and taking each Licensed Product into account separately and not aggregating Net Sales of separate Licensed Products, the applicable royalty rates shall be:

- [\*\*] of the first [\*\*] of annual Net Sales;
- [\*\*] of annual Net Sales between [\*\*] and [\*\*];
- [\*\*] of annual Net Sales between [\*\*] and [\*\*]; and
- [\*\*] of annual Net Sales in excess of [\*\*].

(iii) With respect to any Licensed Product which is not covered by a Valid Claim which contains a composition of matter claim in the country where it is sold, but is covered by a pending patent within the Licensed Patents containing a valid composition of matter claim in the country where such Licensed Product is sold, the applicable royalty rate shall be, in lieu of the foregoing rates, [\*\*] on all annual Net Sales

(b) In the event that any of the issued patents contemplated in Section 3.3(a) contain only awarded valid utility claims, the Parties shall negotiate in good faith lesser royalty rates for the sale of Licensed Products. Such royalty rates shall reflect customary royalties for intellectual property of the type, degree of proprietary protection and value mutually agreed to by MAYO and ACORDA.

(c) Beginning on the first anniversary of the first commercial sale of the First Licensed Product, ACORDA shall pay MAYO the following minimum annual royalties equal to the difference between the actual annual amounts paid to MAYO pursuant to Section 3.3(a) and (b) and the following:

- (i) [\*\*] on the first anniversary;
- (ii) [\*\*] on the second anniversary;
- (iii) [\*\*] on the third anniversary; and
- (iv) [\*\*] on the fourth anniversary and on each anniversary thereafter.

3.4 Third Party Royalties. In the event that ACORDA, its Affiliates or Sublicensees, as the case may be, pays royalties or other amounts to any third party to make, use or sell a Licensed Product or to avoid or settle a claim of infringement of the intellectual property rights of such third party, ACORDA may offset such amounts paid against up to [\*\*] of the amount of royalties due from ACORDA to MAYO, *provided however*, that in no event shall MAYO receive less than [\*\*] of the Net Sales of the Licensed Product sold by ACORDA, its Affiliates or Sublicensees, as the case may be.

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

**3.5      Certain Affiliate and Sublicensee Royalties**. In the event that ACORDA receives any royalties from Affiliates or Sublicensees with respect to the sale of Licensed Products for use in applications that ACORDA has decided, in its business judgment, not to commercialize, ACORDA shall pay MAYO [\*\*] of such amounts received, *provided however*, that MAYO shall not be entitled to any share of amounts received by ACORDA from its Affiliates or Sublicensees for:

- (a) equity;
- (b) debt;
- (c) research and development;
- (d) any payments attributable to performance based milestones;
- (e) the license or sublicense of,
  - (i) any intellectual property other than the Licensed Patents,
  - (ii) any products other than the Licensed Products; or
- (f) reimbursement for patent or other expenses.

**3.6      Obligation to Pay Royalties**. In no event shall more than one royalty be due hereunder with respect to any unit of Licensed Product even if covered by more than one patent or Valid Claim of any patent included in the Licensed Patents. Except as provided in Section 3.5, there shall be no obligation to pay royalties to MAYO under this Section 3 on sales of Licensed Products between ACORDA and its Affiliates and Sublicensees, but in such instances the obligation to pay royalties shall arise upon the sale by ACORDA or its Affiliates or Sublicensees. Failure to make such royalty payments shall be deemed a Material Breach of this Agreement. Payments due under this Section 3 shall be deemed to accrue when payment is received by ACORDA for Licensed Products.

**3.7      Royalties on Combined Products**. Where a Licensed Product is sold in combination with one or more other products that are not Licensed Products (the "Combined Product"), ACORDA shall pay royalties to MAYO based upon the value of the Combined Product attributable to the Licensed Patents. The Parties agree to negotiate in good faith to reach a mutual agreement concerning the value of Combined Product attributable to such Licensed Patents, *provided however*, that ACORDA shall pay MAYO no less than [\*\*] of the Net Sales of such Combined Product.

#### **4.      PAYMENTS AND RECORDS**.

**4.1      Payment**. Except as otherwise provided herein, all royalties and other payments due hereunder shall be paid quarterly within 45 days after the end of each calendar quarter in which such payments or royalties accrue. Each such payment shall be accompanied by a statement identifying the payments made, including a Licensed Product-by-Licensed Product and

country-by-country statement of the amount of Net Sales during such quarter, the amount of royalties due on such Net Sales and the amount of any credits being applied to such royalties. Failure to make such payments on time shall be deemed a Material Breach of this Agreement.

4.2 Mode of Payment. ACORDA shall make all payments required under this Agreement in U.S. Dollars. The payments due shall be translated at the rate of exchange at which United States Dollars for the currency of the country in which the payment accrued, as listed in *The Wall Street Journal* on the last business day of the calendar quarter in which such sales, if any, were made.

4.3 Taxes. Royalties shall be paid to MAYO free and clear of all foreign taxes, including withholding and turnover taxes, except such taxes which ACORDA may be required to withhold by a foreign country. Any tax required to be withheld by ACORDA or its Affiliates or Sublicensees under the laws of any foreign country for the account of MAYO shall be promptly paid by ACORDA or its Affiliate or Sublicensee for and on behalf of MAYO, with proof of payment of such tax together with official or other appropriate evidence issued by the appropriate governmental authority sufficient to enable MAYO to support a claim for income tax credit in respect to any sum so withheld. Any such tax required to be withheld shall be an expense of and borne solely by MAYO.

4.4 Records Retention. ACORDA shall keep complete and accurate records pertaining to the manufacture, use and sale of Licensed Products and in sufficient detail to permit MAYO to confirm the accuracy of royalty calculations under this Agreement.

4.5 Audit Request. At the request and expense of MAYO, ACORDA shall permit an independent, certified public accountant appointed by MAYO and acceptable to ACORDA, at reasonable times and upon reasonable notice, to examine those records as may be necessary to: (i) determine, with respect to any calendar year ending not more than three years prior to MAYO's request, the correctness of any report or payment made under this Agreement; or (ii) obtain information as to the royalty payable for any calendar year in the case of ACORDA'S failure to report or pay pursuant to this Agreement. Results of any such examination shall be made available to both Parties. MAYO shall bear the full cost of the performance of any such audit; *provided however*, that in the event such audit reveals an underpayment by ACORDA in excess of five percent of the total amount of payment due by ACORDA to MAYO for any calendar year subject to such audit, ACORDA shall reimburse MAYO for the cost of such audit.

## 5. DUE DILIGENCE.

5.1 Diligence. ACORDA, directly or through its Affiliates or Sublicensees, shall use reasonable commercial efforts, consistent with its business judgment, to develop and commercialize Licensed Products during the term of this Agreement and obtain and maintain such approvals as may be necessary for the sale of Licensed Products in the United States and in such other worldwide markets as ACORDA selects to commercialize such Licensed Products.

5.2 Reports. During the term of this Agreement and until the First Commercial Sale of the first Licensed Product, ACORDA shall deliver to MAYO semi-annual reports, due within

45 days after the end of each June and December, summarizing the efforts of ACORDA, its Affiliates and its Sublicensees to develop and commercialize Licensed Products.

(a) If MAYO reasonably believes that ACORDA is not satisfying ACORDA's diligence obligations set forth in Section 5.1 (or does not have sufficient information to make such determination), it may request ACORDA to inform MAYO of such efforts as ACORDA, its Affiliates or Sublicensees are undertaking to comply with its obligations thereunder. Within 60 days from receipt of such request, ACORDA shall then report its efforts to develop and commercialize Licensed Products and, if either Party requests, the Parties shall meet to discuss the situation.

(b) At any time during such 60-day period, either Party may request the use of a mediator to assist in the resolution of such dispute. In such event, both Parties shall try in good faith to resolve such dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Rules by a single mediator, who shall have experience and be knowledgeable in the pharmaceutical industry, appointed in accordance with such rules. The Parties agree to submit to one day of mediation to take place within 30 days after the selection of such mediator, unless the Parties otherwise agree. The costs of any such mediation, including administrative fees and fees of the mediator, shall be shared equally by the Parties, and each Party shall bear its own expenses in such mediation.

(c) If, at the end of the later of the 60 day period referred to in Section 5.3(a) or the unsuccessful conclusion of the mediation, if any, commenced pursuant to Section 5.3(b), MAYO still believes that ACORDA is not exercising sufficient efforts to satisfy the diligence obligations set forth in Section 5.1, MAYO shall initiate a Short-Form Arbitration proceeding pursuant to Section 5.4 within 30 days thereafter. The sole question before the arbitrator shall be whether ACORDA is exercising sufficient efforts to satisfy the diligence obligations set forth in Section 5.1. If MAYO fails to initiate such arbitration within such 30 day period, MAYO shall have no further right to dispute ACORDA's efforts to satisfy its diligence obligations with respect to the period in question.

(d) The foregoing is intended to provide MAYO the means to reasonably exercise its rights hereunder, and shall not be used to place unreasonable reporting burdens on ACORDA. MAYO may not commence a request for the foregoing information from ACORDA for at least one year after MAYO last commenced a request therefor.

5.3 Short-Form Arbitration. Any dispute subject to short-form arbitration as provided in Section 5.3 shall be finally settled by binding arbitration in New York City, New York (at a specific location to be agreed upon by the Parties) under the Licensing Rules of the American Arbitration Association by a panel of one or more arbitrators, who shall have experience and be knowledgeable in the pharmaceutical industry, appointed in accordance with such rules. (Such arbitrators shall make their determination on the basis of "baseball arbitration" principles. THE FOREGOING REMEDY SHALL BE EACH PARTY'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY SUCH DISPUTE. Except as specifically otherwise set forth in Section 5.3 and this Section 5.4 such arbitration shall be conducted in accordance with the provisions of Exhibit D.

## **6. "OWNERSHIP; PATENTS; MARKETING EXCLUSIVITY; PATENT TERM EXTENSIONS"**

### **6.1 Ownership.**

(a) Except as otherwise provided in Section 6.1(b) through (e), MAYO shall retain all right, title and interest in and to the Licensed Technology, regardless of which Party prepares and prosecutes the patent applications associated therewith, or maintains the patents or other intellectual property rights related, subject to the right and license granted to ACORDA pursuant to Section 2.

(b) Rights to Inventions for which employees or agents of MAYO are the sole inventor(s) as determined in accordance with U.S. patent laws shall belong to MAYO.

(c) Rights to Inventions for which employees or agents of ACORDA are the sole inventor(s) as determined in accordance with U.S. patent laws shall belong to ACORDA.

(d) Rights to Inventions made jointly by employees and agents of MAYO and by employees and agents of ACORDA as determined in accordance with U.S. patent laws shall belong jointly to MAYO and to ACORDA.

(e) Rights held by MAYO in any Inventions, including without limitation, rights in and to patent applications and patents which may be obtained thereon, shall be within the terms Licensed Patents and shall be subject to the license granted to ACORDA herein.

(f) In the event as to any Invention either Party determines that it may be advisable to consider special ownership or license arrangements among them in order to maximize the commercial protection or utility afforded under any applicable patent law, the Parties shall discuss and consider in good faith the implementation of such special arrangements as a means of maximizing the value of such Invention for their mutual benefit.

### **6.2 Patent Prosecution and Maintenance .**

(a) ACORDA, at its sole cost and expense (including, without limitation, legal fees, filing and maintenance fees or other governmental charges), shall (i) commencing on the Effective Date, have full responsibility for and shall control the preparation and prosecution of all patent applications, and the maintenance of all patents, related to the Licensed Technology, and (ii) reimburse the reasonable expenses in connection with such activities prior to the Effective Date, actually incurred by MAYO, in connection with the filing, prosecution and maintenance of the Patent Rights, as shown by MAYO's books and records.

(b) ACORDA shall select qualified patent counsel to file and prosecute all such patent applications. ACORDA shall provide copies to MAYO of any proposed filings to make to any patent office relating to the Patent Rights in advance, shall consult with MAYO, and shall in good faith consider and give due respect to MAYO's position with respect thereto. In addition, ACORDA shall provide copies to MAYO of any written communications received from any patent office relating to the Patent Rights.

(c) MAYO shall provide ACORDA with a credit against earned royalties due MAYO in the amount of fifty percent (50%) of all expenses, costs and fees (including attorney's fee's) paid by ACORDA in pursuant to this Section 6.2. At MAYO's request, ACORDA shall provide MAYO with reasonable documentation of such costs.

(d) Each Party agrees to cooperate with the other Party to execute all lawful papers and instruments, to make all rightful oaths and declarations and to provide consultation and assistance as may be necessary in the preparation, prosecution, maintenance, and enforcement of all Patent Rights.

6.3 Patent Enforcement .

(a) If either Party learns of an infringement or other use, rights or ownership claim or threatened infringement or other such claim by a third party with respect to any Licensed Technology within the Territory, such Party shall promptly notify the other Party and shall provide such other Party with available evidence of such infringement, whereupon the parties shall consult to determine if they will jointly bring action to terminate such infringement or misappropriation. The costs and expenses of any such action (including fees of attorneys and other professionals) shall be borne by the Parties in such proportions as they may agree in writing. Any recovery obtained by the Parties in such action shall be used to reimburse the cost of such action to the Parties in proportion to their respective contributions to the costs and expenses incurred in such action, and the remainder shall be divided equally between the Parties.

(b) In the event that the Parties fail to initiate an action to terminate such infringement or misappropriation within ninety (90) days after the last party receives notice of such infringement or misappropriation, MAYO shall have the first right, but not the duty, to institute at its sole cost and expense, actions against third parties based on any Licensed Technology under this Agreement. Any recovery obtained by MAYO in such action shall be used to reimburse the cost of such action and the remainder shall be retained by MAYO.

(c) In the event that the Parties fail to initiate an action to terminate such infringement or misappropriation within ninety (90) days after the last party receives notice of such infringement or misappropriation, and in the event MAYO does not institute an infringement proceeding against an offending third party within 180 days after the last party receives such notice, ACORDA shall have the right, but not the duty, to institute at its sole cost and expense, such an action with respect to any infringement or misappropriation by a third party. Any recovery obtained by ACORDA shall be used to reimburse the cost of such action and the remainder shall be retained by ACORDA, *provided however*, that such amount shall be deemed to constitute Net Sales for purposes of this Agreement.

(d) Unless the Parties otherwise agree in writing, each Party shall execute all necessary and proper documents and provide reasonable, but not financial, cooperation as shall be appropriate, to allow the other Party to institute and prosecute such infringement actions.

6.4 Infringement Action by Third Parties .

(a) In the event of the institution of any suit by a third party against ACORDA for patent infringement involving the manufacture, sale, offer for sale, distribution or marketing

of any Product in the Territory, ACORDA shall have the right to defend such suit at its own expense, and MAYO hereby agrees to assist and cooperate with ACORDA, at ACORDA's expense, to the extent necessary in the defense of such suit. During the pendency of any such action, ACORDA shall continue to make all payments due under this Agreement, *provided however*, that ACORDA shall be entitled to a credit against such payments of an amount equal to one-half of the reasonable costs actually incurred in such action.

(b) If ACORDA finally prevails and receives an award from such third party as a result of such action (whether by way of judgment, award, decree, settlement or otherwise), such award shall be allocated, first, to ACORDA and MAYO to reimburse each Party for its pro rata share of costs and expenses incurred in such action, and the remaining amount shall be retained by ACORDA, *provided however*, that such amount shall be deemed to constitute Net Sales for purposes of this Agreement.

(c) If ACORDA finally loses, whether by judgment, award, decree or settlement, and is required to pay a royalty or damages to such third party, ACORDA shall continue to pay the royalties for such Licensed Product in the country(ies) which is the subject of such action, but shall be entitled to a credit against such payments in an amount-equal to the royalty or damages paid to such third party, but in no event shall such credit be more than 50% of the royalties due hereunder for such Licensed Product in such country(ies).

(d) If ACORDA is required to pay a royalty or damages to a third party pursuant to Section 6.4(c) and the amount of such royalty or damages exceeds 50% of the royalties due hereunder for such Licensed Product in such country(ies), ACORDA shall have the right to terminate this Agreement solely with respect to such Licensed Product in such country(ies). The effect of any such termination shall be the same as any termination by ACORDA pursuant to Section 9.4.

#### 6.5 Marketing Exclusivity/Patent Term Extensions

(a) ACORDA shall be responsible for taking all necessary steps to prosecute, perfect and maintain such applicable Marketing Exclusivity Rights as it deems appropriate.

(b) ACORDA grants to MAYO the exclusive right to rely on any Regulatory Review Period for any Licensed Product and agrees to be MAYO's agent for such purposes. In the event of any request from the Patent and Trademark Office for assurances that MAYO has the right to rely on the Regulatory Review Period, including assurances that ACORDA is MAYO's agent for such purposes, this Section 6.5 shall be conclusive evidence of ACORDA's agreement that MAYO has such right. Except as may otherwise be contemplated under this Agreement with respect to the transfer of rights or obligations to Affiliates, Sublicensees and permitted assignees, ACORDA may not transfer, assign, license, mortgage or hypothecate in whole or in part to any person, whether voluntarily or involuntarily, its right to a Regulatory Review Period for any Licensed Product without the prior written consent of MAYO, which consent shall not be unreasonably withheld or delayed.

(c) Subject to the provisions of Section 6.5 (e), MAYO reserves the right to determine that ACORDA should file and prosecute any application for a Patent Term Extension;

(d) ACORDA agrees to take all reasonable actions which MAYO determines to be necessary to ensure the complete and timely filing and prosecution of any application for a Patent Term Extension, including but not limited to providing MAYO with relevant Patent Term Extension Information.

(e) In the event that more than one Licensed Patent could be the subject of an application for a Patent Term Extension, ACORDA shall have the right, after consultation with MAYO, to select the Licensed Patent.

## **7. PUBLICATION; CONFIDENTIALITY.**

7.1 Publication. ACORDA acknowledges that MAYO is dedicated to free scholarly exchange and to public dissemination of the results of its scholarly activities. In the event MAYO, or any employee, student or other agent of MAYO who is performing any work with respect to the Program, wishes to make any publication or otherwise disseminate information concerning or obtained through the Program, MAYO will deliver to ACORDA copies of such scientific articles, papers and abstracts for review and comment at least 60 days prior to the date of submission for publication or presentation. ACORDA's permission to publish shall not be unduly withheld, and ACORDA's permission or withholding of such permission will be submitted to MAYO in writing not later than 30 days following ACORDA's receipt of the material for review. If ACORDA determines that such proposed publication or presentation contains patentable subject matter that requires protection, ACORDA may require the delay of publication or presentation for a period not to exceed 90 days for the purpose of allowing the filing of patent applications. If ACORDA identifies any of ACORDA's Confidential Information (as defined herein) in such proposed publication or presentation, MAYO will delete such information from same, or modify the disclosure of such information from same in a manner reasonably acceptable to ACORDA.

### **7.2 Confidentiality; Exceptions**

(a) "Confidential Information of a party shall mean all reports, data and information disclosed by such party to another party, which is (i) in writing and marked "CONFIDENTIAL" or "PROPRIETARY" or marked with words of similar import, or (ii) disclosed through oral, visual, or other non-written means, identified as confidential or proprietary at the time of initial disclosure, and summarized and confirmed as confidential or proprietary in writing to the receiving party within thirty (30) days of such disclosure. Any markings, stamps, or legends identifying confidential information shall not impose any obligations on either party inconsistent with this agreement. Any copies of the information made by the receiving party shall reproduce the confidential markings and any other legends contained on such information.

(b) Except to the extent expressly authorized by this Agreement or otherwise agreed in writing, the Parties agree that, during the term of this Agreement and for five years thereafter, the receiving Party, its Affiliates, its licensees and its Sublicensees shall keep, and shall ensure that their respective employees, officers, directors and trustees shall keep, completely confidential and shall not publish or otherwise disclose and shall not use any

Confidential Information for any purpose other than carrying out the obligations of the receiving Party under this Agreement except to the extent that it can be established by the receiving Party by competent proof in the form of written records maintained by the receiving Party that such information: (i) was already known to the receiving Party, other than under an obligation of confidentiality, at the time of disclosure by the disclosing Party; (ii) was generally available to the public or otherwise part of the public domain at the time of its disclosure to the receiving Party; (iii) became generally available to the public or otherwise part of the public domain after its disclosure and other than through any act or omission of the receiving Party in breach of this Agreement; or (iv) was disclosed to the receiving Party, other than under an obligation of confidentiality, by a third party who had no obligation to the disclosing Party not to disclose such information to others.

7.3     Exceptions to Obligation. The restrictions contained in Section 7.2 shall not apply to Confidential Information that: (i) is submitted by the recipient to governmental authorities to facilitate the issuance of marketing approvals for Licensed Products, provided that reasonable measures shall be taken to assure confidential treatment of such information; (ii) is provided by the receiving Party to third parties under appropriate terms and conditions, including confidentiality provisions substantially equivalent to those in this Agreement, for consulting, manufacturing development, manufacturing, external testing and marketing trials; or (iii) is otherwise required to be disclosed in compliance with applicable laws or regulations or order by a court or other regulatory body having competent jurisdiction, provided that if a Party is required to make any such disclosure of the other Party's Confidential Information it will, except where impracticable for necessary disclosures, for example to physicians conducting studies or to health authorities, give reasonable advance notice to the other Party of such disclosure requirement and, except to the extent inappropriate in the case of patent applications, will use its best efforts to secure confidential treatment of the Confidential Information required to be disclosed, and shall cooperate with efforts of the disclosing Party to limit disclosure, as appropriate.

7.4     Confidentiality regarding Patient Information. Notwithstanding anything in this Section 7 to the contrary, identifiable patient information obtained in the performance of the Program shall be deemed Confidential Information and shall be kept confidential by both Parties permanently except: (i) when that information is required to be disclosed by regulatory authorities; or (ii) with the patient's consent.

## **8. INDEMNIFICATION.**

8.1     Products Liability. ACORDA shall defend, indemnify and hold MAYO and MAYO's Affiliates, and their respective trustees, officers and employees, harmless from and against any and all claims, suits or demands for liability, damages, losses, costs and expenses (including the costs and expenses of attorneys and other professionals) (collectively, a "Claim") arising out of or resulting from third party claims or suits resulting from: (i) the use by ACORDA or its Affiliates or Sublicensees of any of the Licensed Technology, (ii) the use by ACORDA or its Affiliates or Sublicensees of information concerning or obtained through the Program, or (iii) the manufacture, use, sale or offer for sale of a Licensed Product by ACORDA or its Affiliates or Sublicensees pursuant to this Agreement; provided that such Claim does not arise out of or result from a breach of any of MAYO's representations or warranties made under

this Agreement, and provided further that such Claim is not covered by MAYO's indemnification provided in Section 8.2.

ACORDA shall, during the term of this Agreement, carry occurrence-based liability insurance with policy limits of at least THREE MILLION DOLLARS (\$3,000,000). In addition, such policy shall name MAYO as an additional-named insured.

8.2        MAYO Indemnification.

(a)        MAYO shall defend, indemnify and hold ACORDA and its Affiliates and Sublicensees and their respective directors, officers and employees, harmless from and against any and all Claims arising out of or resulting from third party claims or suits resulting from (a) any negligence, recklessness or wrongful intentional acts or omissions of MAYO and its trustees, officers, employees and agents, including Dr. Moses Rodriguez and Dr. Larry Pease in connection with (i) the work performed by MAYO, Dr. Moses Rodriguez or Dr. Larry Pease under the Program, and (ii) any other development and/or commercialization work relating to any Licensed Products or Licensed Technology before the Effective Date, or thereafter in connection with MAYO's, Dr. Rodriguez' or Dr. Pease's development of Licensed Products or Licensed Technology; excepting in any case to the extent any such Claims result from the negligence, recklessness or wrongful intentional acts or omissions of ACORDA or its Affiliates or Sublicensees, or their respective directors, officers, employees or agents.

(b)        Notwithstanding any other provision of this Agreement, including those which may impose any obligation or cost on ACORDA in 'connection with patent prosecution, enforcement and infringement actions from third parties under Section .6, MAYO shall defend, indemnify and hold ACORDA and its Affiliates and Sublicensees and their respective directors, officers and employees, harmless from and against any and all Claims arising out of or resulting from third party claims or suits resulting from or in any way related to the TEVA Agreement and MAYO shall, at its sole expense, take all reasonable actions and adopt all reasonable positions with third parties in order to permit ACORDA full enjoyment of the exclusive license granted under this Agreement and to avoid or mitigate any conflicts between with the license hereunder and any rights which MAYO may have granted under the TEVA Agreement in ACORDA's favor.

8.4        Notice; Waiver of Subrogation.

(a)        In the event that any person entitled to indemnification (an "Indemnitee") seeks indemnification under this Section 8, the Indemnitee agrees to: (i) promptly inform the indemnifying Party (the "Indemnitor") of any claim, suit or demand threatened or filed, (ii) permit the Indemnitor to assume direction and control of the defense or Claims resulting therefrom (provided that Indemnitor may not settle any Claim against an Indemnitee without the consent of the Indemnitee, which consent shall not be unreasonably withheld), and (iii) cooperate as requested (at the expense of the Indemnitor) in the defense of the Claim.

(b)        Except as otherwise expressly provide in this Agreement, each Indemnitor waives any right of subrogation that it may have against an Indemnitee resulting from any Claim for which an Indemnitor has agreed to indemnify an Indemnitee under Section 8 of this

Agreement. Such waiver shall not, however, be deemed a waiver of any subrogation rights an Indemnitor may have against third parties.

## **9. TERM AND TERMINATION.**

9.1 Term. This Agreement shall commence as of the Effective Date and, unless sooner terminated as provided hereunder, shall expire as follows:

(a) As to each Licensed Product and as to each country in the Territory, on a country-by-country and Licensed Product-by-Licensed Product basis upon the expiration of the last to expire Licensed Patent in such Licensed Product or in such country, as the case may be.

(b) This Agreement shall terminate in its entirety upon its termination as to all Licensed Patents in all countries.

9.2 Breach. A Material Breach by either Party of any of the obligations contained in this Agreement shall entitle the other Party to give to the Party in default notice specifying the nature of the Material Breach and requiring it to cure such Material Breach. If such Material Breach is not cured within 90 days after the receipt of such notice (or, if such Material Breach reasonably cannot be cured within such 90-day period, if the Party in default does not commence and diligently continue actions to cure such default during such 90-day period), the notifying Party shall be entitled, without prejudice to any of the other rights conferred on it by this Agreement, and in addition to any other remedies available to it at law or in equity, to terminate this Agreement by giving written notice to take effect on the date of such notice. The right of either Party to terminate this Agreement, as provided in this Section 9.2, shall not be affected in any way by its waiver or failure to take action with respect to any previous Material Breach.

9.3 Insolvency or Bankruptcy. In the event that either Party shall become insolvent, shall make an assignment to the benefit of creditors, or shall have a petition in bankruptcy filed for or against it (which, in the case of an involuntary petition, is not dismissed or stayed within sixty (60) days after such petition is filed) (a “Bankrupt Party”), the other Party shall have the right to terminate this Agreement in its entirety immediately upon written notice of such Termination. All rights and licenses granted by the Bankrupt Party under this Agreement are, and shall otherwise be deemed to be; for purposes of Section 365(n) of Title 11, US Code (the “Bankruptcy Code”), licenses of rights to “intellectual property” as defined under Section 101(60) of the Bankruptcy Code. Unless the other Party elects to terminate this Agreement under this Section, the Parties agree that the other Party, as a licensee of such rights under this Agreement, shall retain and may fully exercise all of its rights and elections under the Bankruptcy Code, subject to the continued fulfillment of its obligations under this Agreement.

9.4 Termination by ACORDA. ACORDA shall have the right to terminate the right and license granted herein, in whole or as to any Licensed Product in any country in the Territory, at any time, and from time to time, by giving written notice to MAYO. Such termination shall be effective 90 days from the date such notice is given, and all of ACORDA’s rights associated with such Licensed Product(s) and such country(ies) shall cease as of that date, subject to Sections 9.5 through 9.7.

9.5        Right to Sell Stock on Hand. Upon the termination of any right and license granted herein, in whole or as to any Licensed Product, for any reason other than ACORDA's failure to cure a Material Breach of this Agreement, ACORDA shall have the right for one year or such longer period as the Parties may reasonably agree in writing to dispose of all Licensed Products or substantially completed Licensed Products then on hand to which such termination applies, and royalties shall be paid to MAYO with respect to such Licensed Products as though this Agreement had not terminated.

9.6        Effect of Termination.

(a)        Following the expiration of any right and license granted under this Agreement in whole or in part as to any Licensed Product in any country in the Territory pursuant to Section 9.1, ACORDA shall have the royalty-free, non-exclusive right to continue to use the Licensed Technology for the manufacture, use and sale of Licensed Products as theretofore licensed under this Agreement.

(b)        Upon Termination of this Agreement by ACORDA pursuant to Section 9.2 or 9.3: (i) MAYO shall promptly transfer to ACORDA copies of all data, reports, records and materials in MAYO's possession or control that relate to the Licensed Products and return to ACORDA all relevant records and materials in MAYO's possession or control containing Confidential Information of ACORDA, including all information concerning or obtained through the Program; (ii) ownership of all INDs, PLAs and other regulatory filings made or filed for any Product shall be transferred solely to ACORDA, and (iii) at ACORDA's election, any sublicenses granted by ACORDA under the Licensed Technology shall be deemed terminated or automatically assigned to MAYO.

(c)        Upon Termination of this Agreement by MAYO pursuant to Section 9.2 or 9.3: (i) ACORDA shall promptly transfer to MAYO copies of all data, reports, records and materials in ACORDA's possession or control that relate to the Licensed Products and return to MAYO all relevant records and materials in ACORDA's possession or control containing Confidential Information of MAYO; (ii) all licenses granted for Licensed Technology by MAYO to ACORDA under Section 2 shall terminate; (iii) all sublicenses granted by ACORDA under the Licensed Technology shall be deemed automatically assigned to MAYO. Thereafter, MAYO shall have the right to develop, make, have made, use, sell or have sold any Licensed Product.

(d)        Upon Termination of this Agreement by ACORDA pursuant to Section 9.4: (i) each Party shall promptly transfer to the other Party copies of all data, reports, records and materials of the other Party in the possession or control of such Party that relate to the Licensed Products; (ii) each Party shall promptly return to the other Party all relevant records and materials in such Party's possession or control containing Confidential Information of the other Party; and (iii) all licenses granted by either Party to the other Party under Section 2 shall terminate. Thereafter, each Party shall have the right to develop, make, have made, use, sell or have sold any Licensed Product, to the extent legally permissible.

9.7        Accrued and Surviving Rights and Obligations. Termination, relinquishment or expiration of this Agreement for any reason shall be without prejudice to any rights, obligations or liabilities which shall have accrued to the benefit of either Party prior to such Termination, relinquishment or expiration (including, without limitation, ACORDA's obligation to pay all

royalties which shall have accrued hereunder as of the effective date of such Termination). The Parties' rights and obligations under Sections 4, 6, 7, 8, 9.5, 9.6, 9.7, 10.5, and 10.12 shall survive Termination.

## **10. MISCELLANEOUS PROVISIONS.**

10.1 Relationship of Parties. Nothing in this Agreement is intended or shall be deemed to constitute • a partnership, agency, employer-employee or joint venture relationship between the Parties. No Party shall incur any debts or make any commitments for the other, except to the extent, if at all, specifically provided herein.

10.2 Assignment. Except as otherwise provided herein, neither this Agreement nor any interest hereunder shall be assignable by any Party without the prior written consent of the other, which consent shall not be unreasonably withheld; *provided, however*, that either Party may assign this Agreement to any wholly-owned subsidiary or to any successor by merger or sale of substantially all of those of its assets to which this Agreement relates in a manner such that the assignor shall remain liable and responsible for the performance and observance of all its duties and obligations hereunder. This Agreement shall be binding upon the successors and permitted assigns of the Parties, and the name of a Party appearing herein shall be deemed to include the names of such Party's successors and permitted assigns to the extent necessary to carry out the intent of this Agreement. Any assignment not in accordance with this Section 10.2 shall be void.

10.3 Further Actions. Each Party agrees to execute, acknowledge and deliver such further instruments, and to do all such other acts, as may be necessary or appropriate in order to carry out the purposes and intent of this Agreement..

10.4 Force Majeure. Neither Party shall be liable to the other for loss or damages or shall have any right to terminate this Agreement for any default or delay attributable to any act of God, flood, fire, explosion, strike, lockout, labor dispute, shortage of raw materials, casualty or accident, war, revolution, civil commotion, act of public enemies, blockage or embargo, injunction, law, order, proclamation, regulation, ordinance, demand or requirement of any government or subdivision, authority or representative of any such government, or any other cause beyond the reasonable control of such Party, if the Party affected shall give prompt notice of any such cause to the other Party. The Party giving such notice shall thereupon be excused from such of its obligations hereunder as it is thereby disabled from performing for so long as it is so disabled and for 30 days thereafter.

10.5 No Trademark Rights. Except as otherwise provided herein, neither Party shall have any right, express or implied, to use in any manner, in connection with the performance of this Agreement, the name or other designation of the other Party or any other logo, name, trademark, service mark or trademark of the other Party, or the name of any employee or agent of the other Party, without that Party's prior, written, express consent. Either Party may withhold such consent in either Party's absolute discretion. For MAYO or its Affiliates, such names and marks include, but are not limited to, the terms "Mayo®," "Mayo Clinic®," or any simulation, abbreviation, or adaptation of the same. Violation of this Section 10.5 by either

Party shall be deemed a Material Breach of this Agreement, entitling the other Party to appropriate equitable or legal relief.

10.6     Public Announcements. Except as required by law, including but not limited to, disclosures to prospective investors as required under applicable state and federal securities laws or as required for documents or other communications to be filed or distributed pursuant to requirements of the Securities and Exchange Commission, any stock exchange or NASDAQ, ("Permitted Public Announcement") neither party shall make any public announcement concerning this Agreement or the subject matter hereof without the prior written consent of the other to the text of such public announcement. In the event of a Permitted Public Announcement, the Party making such announcement shall provide the other with a copy of the proposed text prior to such announcement. In the event that a party has obtained consent to the text of such other public announcement, such party shall be entitled to use and reuse, without limitation and in any form, such text in one or more public announcements.

10.7     Notices. All notices and other communications required or permitted to be given under or in connection with this Agreement shall be in writing, and shall be deemed given if delivered personally or by facsimile transmission (receipt verified), express courier service (signature required), or mailed by registered or certified mail (return receipt requested), postage prepaid, to the Parties at the following addresses (or at such other address for a Party as shall be specified by like notice; provided, that notices of a change or address shall be effective only upon receipt thereof):

(a)     If to ACORDA, to:

ACORDA THERAPEUTICS, INC.  
15 Skyline Drive  
Hawthorne, New York 10532  
Attention: President  
Facsimile No.: (914)347-4560

(b)     If to MAYO, to:

MAYO FOUNDATION FOR MEDICAL EDUCATION AND RESEARCH  
200 First Street, SW  
Rochester, Minnesota 55905  
Attention: Office of Technology Commercialization, Mayo Medical Ventures  
Facsimile No.: 507-284-5410

If delivered personally or by facsimile transmission, the date of delivery shall be deemed to be the date on which such notice or request was given. If sent by overnight express courier service, the date of delivery shall be deemed to be the next business day after such notice or request was deposited with such service. If sent by registered or certified mail, the date of delivery shall be deemed to be the third business day after such notice or request was deposited with the U.S. Postal Service.

10.8     Amendment. No amendment, modification or supplement of any provision of this Agreement shall be valid or effective unless made in writing and signed by a duly authorized officer of each Party, and specifically referencing this Agreement.

10.9     **Waiver**. No provision of this Agreement shall be waived by any act, omission or knowledge of a Party or its agents or employees except by an instrument in writing expressly waiving such provision and signed by the waiving Party.

10.10    **Severability**. Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision will be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of this Agreement.

10.11    **Compliance with Law**. Nothing in this Agreement shall be deemed to permit a Party to export, reexport or otherwise transfer any Know-How transferred hereunder or Licensed Products manufactured therefrom without compliance with applicable laws.

10.12    **Governing Law and Jurisdiction**. This Agreement shall be governed by Minnesota law, but specifically not including Article 2 of the Uniform Commercial Code as enacted in Minnesota. This is not a contract for the sale of goods. In addition, no Minnesota conflicts-of-law or choice-of-laws provisions apply to this Agreement. To the extent the substantive and procedural law of the United States would apply to this Agreement, it supersedes the application of Minnesota law. The parties agree that all disputes between them concerning this contract, *other than* as provided for in Section 5.4 hereto, whether arising before or after Termination, will be settled only according to the arbitration process described in Exhibit D, attached to and incorporated into this Agreement, and not through any action at law or in equity, except as otherwise permitted under Exhibit D.

10.13    **Entire Agreement of the Parties**. This Agreement, including the exhibits attached, constitutes and contains the entire understanding and agreement of the Parties and cancels and supersedes any and all prior negotiations, correspondence, understandings and agreements, whether oral or written, between the Parties respecting the subject matter hereof.

10.14    **Descriptive Headings**. The descriptive headings of this Agreement are for convenience only, and shall be of no force or effect in construing or interpreting any of the provisions of this Agreement.

10.15    **Nondisclosure**. Neither Party shall disclose any of the terms of this Agreement without the express, prior, written consent of the other Party, or unless required by law.

10.16    **Counterparts**. This Agreement maybe executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

\* \* \*

IN WITNESS WHEREOF, each of the Parties has caused this License Agreement to be signed by its duly authorized representative as of the date first written above.

ACORDA THERAPEUTICS

By: /s/ Ron Cohen

Name: Ron Cohen

Title: President and CEO

MAYO FOUNDATION FOR MEDICAL  
EDUCATION AND RESEARCH

By: /s/ Rick F. Colvin

Name: Rick F. Colvin

Title: Assistant Treasurer

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

Exhibit C

Remyelination Monoclonal Antibody Cases

PCT/U.S. Serial No.	Title of Application	Date of Filing
US#5,591,629	Monoclonal Antibodies Which Promote Central Nervous System Remyelination	4/29/94
[*]	[*]	4/27/95
[*]	[*]	8/8/96
[*]	[*]	1/7/97
[*]	[*]	5/28/99
[*]	[*]	5/30/00
[*]	[*]	5/10/00
[*]	[*]	5/30/00

**EXHIBIT D**

**MANDATORY MEDIATION AND BINDING ARBITRATION**

1. **NOTICE OF DISPUTE.** Except to the extent otherwise expressly provided in Sections 5.3 and 5.4 of this Agreement, any dispute related to this Agreement between the Parties, including its formation, performance, or Termination, which cannot be resolved by the Parties themselves within thirty (30) days of written notice by one Party to the other of the existence of a dispute, may be referred by either of the parties to mandatory mediation and binding arbitration under the terms of this Exhibit. The Parties intend the mediation/arbitration procedure described in this Exhibit to substitute in all cases for litigation related to any such dispute, subject only to part 7, below, and this agreement to submit all such disputes to mandatory mediation and binding arbitration is irrevocable.
  2. **LIMITATION PERIOD.** No demand for mediation/arbitration may be made regarding any claim more than one hundred eighty (180) days after written notice by one Party to the other of the existence of a dispute, regardless of any otherwise applicable statute of limitations.
  3. **MEDIATOR/ARBITRATOR.** If the Parties cannot agree upon a single mediator/arbitrator within fourteen (14) days after written demand by either of them for mediation/arbitration, then a single mediator/arbitrator shall be chosen by the American Arbitration Association office in New York City, New York, within thirty (30) additional days after the fourteen (14) day period. The mediator/arbitrator shall be generally experienced in the legal and technical matters related to the dispute.
  4. **MEDIATION.** Within thirty (30) days of the appointment of the mediator/arbitrator, the Parties must attend a mediation session at which the mediator/arbitrator personally shall attempt to guide the Parties to a settlement. Each Party may be represented by counsel at the mediation, but each Party must attend through an officer having authority to agree to a settlement at the mediation. The mediation session shall occur in New York City, New York, and shall extend no longer than a single day. Statements or offers made at the mediation session shall not be admissible in any later arbitration hearing.
  5. **ARBITRATION.** If such mediation has not resulted in a mutually-executed settlement agreement (or withdrawal of claim) within five (5) business days after the date of mediation, then the Parties shall proceed to arbitration as described below. Such arbitration, which the Parties intend to be final and to substitute for litigation, shall occur in New York City, New York, and the arbitration results maybe entered as a final judgment in any court with jurisdiction. The decision of the arbitrator shall be final and binding upon the Parties both as to law and fact.
    - (a) **Initial Disclosures.** Within twenty-one (21) days after the date of mediation, the Parties shall exchange written disclosures listing with reasonable specificity: (i) all exhibits expected to be used by the Party at arbitration, and complete copies of such exhibits, (ii) all witnesses expected to be called by the Party at arbitration, and (iii) the substance of the testimony of each witness. Copies of such disclosures shall be sent to the arbitrator. No exhibit or witness may be called if the same does not appear on such disclosure, and
-

no witness may testify as to matters not described in such disclosure, except for rebuttal testimony as may be permitted by the arbitrator.

- (b) Discovery Period. Within fourteen (14) days after exchange of the disclosure notices, the Parties shall make specific discovery requests to the arbitrator, and within an additional fourteen (14) days the arbitrator shall issue to both parties a joint discovery order. The discovery period preceding the arbitration hearing shall not exceed sixty (60) days from the issuance of the discovery order by the arbitrator.
- (c) Scope of Discovery. Discovery shall be limited to that ordered by the arbitrator as being reasonable and necessary, and in no case shall exceed the deposition of two (2) witnesses for each Party, and/or the exchange of more than a total of twenty-five (25) specific and non-compound interrogatories by each party, and/or two specific requests by each Party for the production of documents considered by the arbitrator to be reasonably relevant and not unduly burdensome.
- (d) Hearing. The arbitration hearing, which shall be confidential to the parties and not open to the public, shall not exceed two (2) separate days, and shall be completed within thirty (30) days of the close of discovery. The arbitrator may admit any testimony or other evidence which the arbitrator decides is reasonably relevant to the issues of the arbitration, but excluding statements or offers made by either Party at the mediation session.
- (e) Final Decision. The arbitrator shall issue a final written decision no later than sixty (60) days following the end of the arbitration hearing, stating findings as to law and fact. The decision shall be confidential to the Parties. The arbitrator shall be limited to determining and ordering the payment of actual and direct damages if any, and may order the payment of indirect, special, incidental, or consequential damages only where bad faith has been shown and/or to the extent required to fulfill any obligations under Article 8 of the Agreement. The arbitrator shall not order the payment of punitive or exemplary damages in any case.

6. **COSTS AND FEES**. Both Parties shall be responsible for their own costs and fees (including attorney's fees), and shall divide common costs and fees equally; however, if the arbitrator specifically finds bad faith on the Part of either Party, then the arbitrator may order a different division of costs and fees.

7. **EQUITABLE RELIEF**. Nothing in this Exhibit prohibits either Party from seeking equitable relief to protect its rights to the extent that irreparable harm may occur and damages would not be a sufficient remedy, except that neither Party shall seek to enjoin mediation/arbitration as described in this Exhibit.

- (a) Specific Performance. Among the equitable remedies that a Party may seek under this part 7, either Party may petition a court for specific performance of the terms of this Exhibit, including following the failure of either Party without good cause to adhere to the time limits set out in this Exhibit. A Party securing an order for specific performance

under this part 7(a) is entitled to recover costs and reasonable attorneys' fees in connection with such petition for specific performance and any related hearings.

8. **SURVIVAL**. The rights and obligations of the Parties described in this Exhibit survive the Termination, expiration, non-renewal, or rescission of this Agreement.

9. **GOVERNING RULES AND LAW**. To the extent not inconsistent with the terms of this Exhibit, the mediation and arbitration are governed by the rules of the American Arbitration Association, the Minnesota Arbitration Act, and the Federal Arbitration Act (9 U.S.C s. 1 et seq.).

**Exhibit 10.19**

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

June 1, 2005

RE: September 8, 2000 License Agreement between Acorda Therapeutics, Inc. and The Mayo Foundation for Medical Education and Research (the "License Agreement")

This Letter of Agreement (the "Letter Agreement") constitutes the agreement contemplated by Acorda Therapeutics, Inc. ("Acorda") and Mayo Foundation for Medical Education and Research ("Mayo") (collectively, the "Parties") in the September 30, 2004 letter signed by Rick Colvin and Jane Wasman with respect to Mayo's and Dr. Moses Rodriguez' grant application to the [\*\*\*].

Mayo proposes to enter into an agreement with the University of Minnesota (the "University") under which the University may provide services for various research programs at Mayo, which agreement is attached hereto as Exhibit A. This Letter Agreement relates solely to the work plans (present and future) under the agreement for the development of [\*\*\*] (the "Antibody") within the Field (hereinafter, "Antibody Services Agreement"). The work to be performed pursuant to the Antibody Services Agreement shall be funded largely by a [\*\*\*] received by Mayo and Dr. Rodriguez pursuant to the grant application referenced above.

The parties hereby agree as follows:

1. **Grant**: Acorda hereby grants to Mayo (to the extent Mayo has not already retained a right to use), the University, and any other third parties conducting work under the Antibody Services Agreement a non-exclusive license to use the Antibody for development within the Field for noncommercial purposes pursuant to the [\*\*\*] during the term of the [\*\*\*].
  2. **Project Steering Committee**: Acorda shall be allowed to attend and participate in the two in-person meetings of the Project Steering Committee held each year as established in the Antibody Services Agreement. In addition, Mayo agrees that the Mayo co-chair shall provide Acorda with quarterly updates regarding the work being planned or performed pursuant to the Antibody Services Agreement and shall timely seek Acorda's input related to such work. Mayo also shall provide Acorda with the timely opportunity to review and comment on all future workplans that are contemplated pursuant to the Antibody Services Agreement.
  3. **Indemnification**: The parties agree that, to the extent not already provided for by Section 8.2(a) of the September 8, 2000 License Agreement between Mayo and Acorda, Mayo shall defend, indemnify and hold Acorda and its affiliates and Sublicensees and their respective directors, officers and employees, harmless from and against any and all third party Claims arising out of or resulting from the administration of a product to a human subject(s) and/or other clinical activities (including activities preparatory to such clinical activities or the use of the results therefrom) arising out of or relating to the Antibody Services Agreement.
  4. **Publication**: Mayo shall provide Acorda with the same rights to review, comment on and consent or object to any manuscripts, abstracts, posters, presentations or other potential publications ("Publications") arising out of or relating to the Antibody Services Agreement or the work performed thereunder as are provided to Mayo in the Antibody Services
-

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

Agreement, including the same amount of time for such review. Mayo shall forward to Acorda for Acorda's review, comment and consent all potential Publications as soon as Mayo either drafts a Publication or receives one for review from the University.

5. **Intellectual Property and Confirmation of License Agreement** : The parties acknowledge that the work performed by Mayo under the [\*\*\*] is being performed subject to and pursuant to Sections 2.1 and 2.2 of the License Agreement and any rights granted are solely for the Antibody in the Field. Mayo hereby grants Acorda a non-exclusive, worldwide, royalty-free license, limited to the Antibody in the Field, to any Inventions (as defined in the Antibody Services Agreement) developed by the University or any third party and owned by Mayo pursuant to the Antibody Services Agreement. To the extent Acorda does not have a license under the License Agreement for the work performed by Mayo under the [\*\*\*], including the Antibody Services Agreement, Mayo grants a non-exclusive, royalty-free license to Licensed Technology for the Antibody in the Field. Mayo and Acorda acknowledge that the License Agreement is in full force and effect.
6. **Public Announcements** : The Parties confirm that all public announcements relating to the Antibody Services Agreement, the [\*\*\*] and/or the work performed thereunder shall be subject to the provisions of Section 10.6 of the License Agreement.
7. [\*\*\*]
8. [\*\*\*]
9. **Miscellaneous** : All capitalized terms used in this Letter Agreement and not otherwise defined herein shall have the same meaning as assigned to them in the License Agreement. In the event of a conflict between the terms of the Letter Agreement and the License Agreement, unless otherwise expressly stated herein, the terms of the License Agreement shall govern.

Agreed by on behalf of Mayo Foundation for  
Medical Education And Research:

By: /s/ Rick F. Colvin  
Name: Rick F. Colvin  
Title: Assistant Treasurer

Agreed by on behalf of Acorda  
Therapeutics, Inc.

By: /s/ Ron Cohen  
Name:  
Title:

---

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

**UNIVERSITY OF MINNESOTA**  
**SERVICES AGREEMENT**

**THIS SERVICES AGREEMENT** (the “Agreement”) is entered into effective as of June 20, 2005 (Effective Date), by and between the Regents of the University of Minnesota (the “University”), a Minnesota constitutional corporation, and Mayo Foundation for Medical Education and Research (“Mayo”), a Minnesota charitable corporation., each a “Party” and collectively “Parties.” This Agreement is entered into by the University through its University of Minnesota, Minnesota Molecular and Cellular Therapeutics Facility.

**NOW, THEREFORE**, the parties agree as follows:

1. **Description of Services.** The University shall render the services described within and incorporated hereunder as an individual workplan (“Workplan”) (reference to services in this Agreement shall be deemed to include any deliverables). The University and Mayo may agree to incorporate additional Workplans under this Agreement.

2. **Compensation.** For the services rendered under a Workplan, Mayo shall pay the University the funding amount according to the schedule and as specified under the Workplan.

3. **Term.** The term of this Agreement shall commence on the Effective Date.

The term of this Agreement shall expire five years from the Effective Date, unless terminated earlier as provided in section 4 or extended as may be mutually agreed upon in writing.

4. **Termination.** Either party may terminate this Agreement for material breach on seven (7) days’ written notice, during which period the breaching party may cure. Additionally, either party may terminate this Agreement for its convenience upon thirty (30) days’ prior written notice to the other party. Upon termination, Mayo shall promptly pay the University for all services rendered and costs (but only as specified in a Work Plan) incurred up to and including the effective date of termination.

5. **Limitation of Damages.** EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER, FOR (i) PERSONAL INJURY OR PROPERTY DAMAGES OR (ii) LOST PROFITS, WORK STOPPAGE, LOST DATA, OR ANY OTHER SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES, OF ANY KIND.

6. **Limitation of Remedies.** IN THE EVENT OF THE UNIVERSITY’S BREACH OR FAILURE TO PERFORM ANY OBLIGATION UNDER THIS AGREEMENT, WITH THE EXCEPTION OF UNIVERSITY’S OBLIGATION TO INDEMNIFY MAYO AND ANY BREACH RELATED TO CONFIDENTIALITY OR THE USE OF THE MAYO NAME, THE UNIVERSITY’S ENTIRE LIABILITY AND MAYO’S EXCLUSIVE REMEDY SHALL BE, AT THE UNIVERSITY’S OPTION, EITHER (i) RETURN OF THE MONETARY CONSIDERATION PAID TO THE UNIVERSITY UNDER THIS AGREEMENT OR (ii) THE

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

## UNIVERSITY'S PERFORMANCE OF ANY OBLIGATION THAT FAILED TO SATISFY THE TERMS OF THIS AGREEMENT.

7. **Disclaimer of Warranties.** THE UNIVERSITY DISCLAIMS AND EXCLUDES ALL WARRANTIES, EXPRESS AND IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, CONCERNING THE SERVICES PROVIDED UNDER THIS AGREEMENT. THE PARTIES ACKNOWLEDGE AND AGREE THE SERVICES SHALL BE PROVIDED AND ACCEPTED "AS IS."

8. **No University Endorsements.** In no event shall Mayo (or its successors, employees, agents and contractors) state or imply in any publication, advertisement, or other medium that the University has approved, endorsed or tested any product or service. In no event shall the University's performance of the services described in section 1 be considered a test of the effectiveness or the basis for any endorsement of a product or service.

### 9. **Use of Name or Logo.**

9.1 Mayo agrees not to use the name, logo, or any other marks (including, but not limited to, colors and music) owned by or associated with the University or the name of any representative of the University in any sales promotion work or advertising, or any form of publicity, without the prior written permission of the University in each instance.

9.2 The University shall not use publicly for publicity, promotion, or otherwise, any logo, name, trade name, service mark, or trademark of Mayo or its Affiliates, including, but not limited to, the terms "Mayo®," "Mayo Clinic®," or any simulation, abbreviation, or adaptation of the same, or the name of any Mayo employee or agent, without Mayo's prior, written, express consent. Mayo may withhold such consent in Mayo's absolute discretion.

### 10. **Indemnification.**

10.1 Mayo shall indemnify, defend and hold the University and its regents, faculty members, students, employees, agents and contractors harmless from third party actions, suits, claims, negligent losses, costs, judgments and expenses, including reasonable attorneys' and investigative fees, arising out of: (i) Mayo's infringement of a third party's intellectual property rights or violation of any law, rule, or regulation in the provision of any materials to the University; (ii) personal injury, death or property damages arising out of a failure to warn the University of any dangerous substances or materials supplied to the University by or on behalf of Mayo; (iii) Mayo's, or any other entity's, use of the results or deliverables, or the use of products, services or representations based on such results or deliverables; and (iv) any negligent act or omission of Mayo in connection with this Agreement.

10.2 Subject to the limitations of damages and remedies set forth in this Agreement, the University shall indemnify and hold Mayo and its directors, employees, agents and contractors harmless from third party actions, suits, claims, losses, costs, judgments and expenses, including reasonable attorney and investigative fees, arising out of the University's negligent acts and omissions in performing its duties under this Agreement.

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

10.3 Unless more specific insurance provisions are attached, the following shall apply. At all times during its performance under this Agreement, Mayo shall obtain and keep in force comprehensive general and professional liability insurance, including coverage for death, bodily or personal injury, and property damage, including products liability, with limits of not less than [\*\*\*] each occurrence, and automobile coverage with limits not less than [\*\*\*] each occurrence. All such certificates evidencing such insurance shall name the Regents of the University of Minnesota as an additional insured. Mayo represents that it has workers' compensation insurance to the extent required by law. Mayo agrees to furnish proof of all such insurance to the University upon request.

11. **Publications.** The University and Mayo reserve the right to publish the results of research or investigation related to the services performed under this Agreement. Before publishing, however, the University will give Mayo an opportunity to review the manuscript and will consider suggested modifications. Mayo shall be furnished copies of any proposed publication or presentation at least thirty (30) days in advance of the submission of such proposed publication or presentation to a journal, editor, or other third party. Mayo shall have thirty (30) days after receipt of said copies, to object to such proposed presentation or proposed publication, either because there is patentable subject matter that needs protection and/or there is information that Mayo regards as trade secret, confidential or proprietary, in the proposed publication or presentation, and to propose modifications. In the event that Mayo makes an objection based on patentable subject matter, the University shall refrain from making such publication or presentation for a maximum of ninety (90) days from date of receipt of such objection in order for a patent application to be filed with the United States Patent and Trademark Office and/or foreign patent office(s) directed to the patentable subject matter contained in the proposed publication or presentation. In the event that Mayo makes an objection concerning information that it regards as trade secret, confidential or proprietary, the University will consider such objection and suggested changes in good faith.

## 12. **Confidentiality and Intellectual Property.**

12.1 As part of the development and evaluation of a Workplan and during the course of work under a Workplan, Mayo may disclose information, data, concepts, ideas, methods, processes, techniques, formula, know-how, trade secrets and improvements that are confidential or proprietary to Mayo (hereafter "Proprietary Information"). The University agrees not to use any Proprietary Information during the term of this Agreement, and for five (5) years after the termination or expiration of this Agreement, for any purpose other than as permitted or required under this Agreement. The University also agrees not to disclose or to provide any such Proprietary Information to any third party, except as may be permitted under a Workplan, and to take all reasonable measures to prevent any such disclosure by permitted third parties and by the University's employees, agents, contractors, or consultants during the term of this Agreement, and for five (5) years after its termination or expiration. This obligation does not apply to information that: i) is not marked confidential at the time of disclosure; or ii) is not summarized in a written memorandum as being confidential within ninety (90) days of any initial disclosure.

12.2 The University agrees that any and all rights to any inventions, copyrightable materials, research notebooks, prototypes, trade secrets, processes or other tangible or intellectual property developed pursuant to this agreement ("Inventions") shall belong solely to

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

Mayo. The University acknowledges that all materials prepared by the University pursuant to this agreement are “work made for hire” as that term is understood and used in Title 17 of the United States Code, and that the copyright, if any, shall belong to Mayo during the initial, renewal and extended period or periods of the copyright. The University will and hereby assigns all right, title and interest in and to such Inventions to Mayo, including any materials that are not deemed “works made for hire,” and further agrees to execute all documents and do all actions necessary or useful (at no charge to Mayo, but at Mayo’s cost) to effect such assignment.

### **13. Project Steering Committee.**

13.1 A committee (hereinafter referred to as the Project Steering Committee) consisting of up to four (4) members from MAYO and up to four (4) members from the University will establish general guidelines and priorities for the collaboration contemplated hereunder. MAYO’s members and the University’s members shall be determined prior to approval of the first individual workplan, and shall be named in said Workplan. The Project Steering Committee will be jointly chaired by one member from MAYO and one member from the University.

13.2 The Project Steering Committee shall meet two (2) times a year in person and up to four (4) times a year via teleconference or whenever requested by either Party and whenever deemed relevant by the Project Steering Committee. At least two members from each side shall participate at each meeting. Furthermore, relevant scientific or other staff from either side and one or more representatives from Mayo Medical Ventures may attend. The members of the Project Steering Committee shall communicate to the extent necessary to coordinate their efforts and shall be responsible for the drafting, within ten (10) working days, of minutes and records from each meeting.

13.3 It is foreseen that the Project Steering Committee may need to refine Workplans on an ongoing basis. Any such revisions must be approved in writing by authorized signatories of both Parties.

13.4 The Project Steering Committee will be responsible for putting in place any quality agreements or other agreements the Project Steering Committee deems necessary for work to be conducted under a Workplan prior to the initiation of that Workplan.

### **14. General Provisions.**

14.1 **Amendment.** This Agreement shall be amended only in a writing duly executed by all the parties to this Agreement.

14.2 **Assignment.** Mayo may not assign any rights or obligations of this Agreement without the prior written consent of the University. In the event of any assignment, Mayo shall remain responsible for its performance and that of any assignee under this Agreement. This Agreement shall be binding upon Mayo, and its successors and assigns, if any. Any assignment attempted to be made in violation of this Agreement shall be void at the sole option of the University.

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

14.3     **Entire Agreement.** This Agreement (including all attached or referenced addenda, exhibits, and schedules) is intended by the parties as the final and binding expression of their agreement and as the complete and exclusive statement of its terms. This Agreement cancels, supersedes and revokes all prior negotiations, representations and agreements between the parties, whether oral or written, relating to the subject matter of this Agreement. The terms and conditions of any purchase order or similar document submitted by Mayo in connection with the services provided under this Agreement shall not be binding upon the University.

14.4     **Force Majeure.** No party to this Agreement shall be responsible for any delays or failure to perform any obligation under this Agreement due to acts of God, strikes or other disturbances, including, without limitation, war, insurrection, embargoes, governmental restrictions, acts of governments or governmental authorities, and any other cause beyond the control of such party. During an event of force majeure the parties' duty to perform obligations shall be suspended.

14.5     **Governing Law.** The internal laws of the state of Minnesota shall govern the validity, construction and enforceability of this Agreement, without giving effect to its conflict of laws principles.

14.6     **Jurisdiction.** All suits, actions, claims and causes of action relating to the construction, validity, performance and enforcement of this Agreement shall be in the courts of Hennepin County, Minnesota.

14.7     **Independent Contractor.** In the performance of their obligations under this Agreement, the parties shall be independent contractors, and shall have no other legal relationship, including, without limitation, partners, joint ventures, or employees. Neither party shall have the right or power to bind the other party and any attempt to enter into an agreement in violation of this section 12.7 shall be void. Neither party shall take any actions to bind the other party to an agreement.

14.8     **Notices.** All notices, requests and other communications that a party is required or elects to deliver shall be in writing and shall be delivered personally, or by facsimile or electronic mail (provided such delivery is confirmed), or by a recognized overnight courier service or by United States mail, first-class, certified or registered, postage prepaid, return receipt requested, to the other party at its address set forth below or to such other address as such party may designate by notice given pursuant to this section:

If to the University:

University of Minnesota  
Attn: Randall Tlachac  
Program Director  
Molecular and Cellular Therapeutics  
1900 Fitch Avenue  
St. Paul, MN 55108  
Phone No.: 612-624-0765  
Facsimile No.: 612-624-1777  
E-mail: rtlachac@unm.edu

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

With a copy to:

University of Minnesota  
Office of the General Counsel  
Attn: Transactional Law Services Group  
360 McNamara Alumni Center  
200 Oak Street S.E.  
Minneapolis, MN 55455-2006  
Facsimile No.: (612) 626-9624  
E-mail: contracts@mail.ogc.umn.edu

If to Mayo:

Mayo Foundation or Medical Education and Research  
200 First Street SW  
Rochester, MN 55905-0001  
Attn: Office of Technology Commercialization  
Phone No.: 507-284-8878  
Facsimile No.: 507-284-5410

14.9     **Survival.** Upon termination or expiration of this Agreement, Sections 2, 5, 6, 7, 8, 9, 10, 11, 12 and 14 shall survive.

**IN WITNESS WHEREOF,** the parties have entered into the Agreement as of the Effective Date.

**Regents of the University of Minnesota**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Mayo Foundation for Medical  
Education and Research**

By: /s/ Rick F. Colvin  
Name: Rick F. Colvin  
Title: Assistant Treasurer  
Date: \_\_\_\_\_

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

**Workplan A**  
[\*\*\*]

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

**IN WITNESS WHEREOF**, the parties have entered into this Workplan A under the Agreement as of the latter of the Effective Date or the date first written below.

**Regents of the University of Minnesota**

**Mayo Foundation for Medical Education  
and Research**

By: /s/ Mark S. Paller

By: /s/ Rick F. Colvin

Name: Mark S. Paller

Name: Rick F. Colvin

Title: Assistant VP for Research

Title: Assistant Treasurer

Date: June 28, 2005

Date: June 16, 2005

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

**IN WITNESS WHEREOF**, the parties have entered into the Agreement as of the Effective Date.

**Regents of the University of Minnesota**

**Mayo Foundation for Medical Education  
and Research**

By: /s/ Mark S. Paller

By: /s/ Rick F. Colvin

Name: Mark S. Paller

Name: Rick F. Colvin

Title: Assistant VP for Research

Title: Assistant Treasurer

Date: June 28, 2005

Date: June 16, 2005

**Exhibit 10.20**

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

**ASSET PURCHASE AGREEMENT**

**by and between**

**ELAN PHARMACEUTICALS, INC.**

**and**

**ACORDA THERAPEUTICS, INC.**

**dated as of July 21, 2004**

---

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

## **ASSET PURCHASE AGREEMENT**

This Asset Purchase Agreement (this “*Agreement*”) is made and entered into as of July 21, 2004, by and between Acorda Therapeutics, Inc., a Delaware corporation (the “*Acquiror*”), and Elan Pharmaceuticals, Inc., a Delaware-corporation (“EPI”).

### **RECITALS**

This Agreement sets forth the terms and conditions upon which the Acquiror is agreeing to purchase the Purchased Assets (as defined below) and assume the Assumed Liabilities (as defined below) from EPI, and EPI is agreeing to sell the Purchased Assets and transfer the Assumed Liabilities to the Acquiror.

### **AGREEMENT**

In consideration of the premises and the mutual covenants and promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the parties agree as follows:

### **ARTICLE I**

#### **DEFINITIONS**

Section 1.01.     Defined Terms. As used in this Agreement, the following defined terms shall have the meanings specified below:

“*Accountants*” means an accounting firm of national reputation (excluding each of the Acquiror’s and EPI’s respective regular outside accounting firms) as may be mutually acceptable to the Acquiror and EPI; *provided, however,* that in the event that the Acquiror and EPI are unable to agree on such an accounting firm within ten (10) days, then the accounting firm shall be selected by lot.

“*Accounts Receivable*” means all trade accounts and notes receivable and other miscellaneous receivables, including those that are not evidenced by instruments or invoices, existing as of the Closing Date.

“*Acquiror*” has the meaning set forth in the preamble hereto.

“*Acquiror 2004 Gross Sales*” has the meaning set forth in Section 4.03(a)(i).

“*Acquiror Adverse Effect*” means an effect or condition that individually or when taken together with all other effects or conditions has had or would reasonably be expected to have more than an immaterial adverse effect (i) on the business, assets, Liabilities, results of operations or financial condition of the Acquiror, taken as a whole, other than any effect or condition relating (x) to the economy in general, or (y) in general to the pharmaceutical industry in which the Acquiror operates and not specifically relating to the Acquiror; *provided,* that such event, circumstance, effect or condition does not have a materially disproportionate effect on the business, assets, Liabilities, results of operations or financial condition of Acquiror, taken as a

---

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

whole; or (ii) on the ability of the Acquiror to perform its obligations under this Agreement and the Related Agreements or on the ability of the Acquiror to consummate the transactions contemplated hereby and thereby; *provided, however*, that the entry into the marketplace of a generic equivalent to any of the Products shall not be an Acquiror Adverse Effect.

“*Acquiror Disclosure Schedule*” has the meaning set forth in the preamble to Article VII.

“*Acquiror Governmental Consents*” has the meaning set forth in Section 7.03(a).

“*Acquiror Indemnitees*” has the meaning set forth in Section 11.02(a).

“*Acquiror Insurance Policies*” has the meaning set forth in Section 7.08.

“*Acquiror Third Party Consents*” has the meaning set forth in Section 7.03(b).

“*Action or Proceeding*” means any action, suit, proceeding, arbitration, Order, inquiry, hearing, assessment with respect to fines or penalties or litigation (whether civil, criminal, administrative or investigative) commenced, brought, conducted or heard by or before, or otherwise involving, any Governmental or Regulatory Authority.

“*Activity Date*” has the meaning set forth in Section 8.05(d).

“*Administrative Fee*” means any administrative service fee paid to managed care organizations, pharmacy benefit managers, health maintenance organizations or other customers (including for the avoidance of doubt governmental organizations).

“*Affiliate*” means, with respect to any Person, any other Person which Controls, is Controlled by or is under common Control with such Person.

“*Agreement*” has the meaning set forth in the preamble hereto.

“*Assignment and Assumption Agreement*” shall mean the Assignment and Assumption Agreement by and among EPI, the Acquiror and Novartis Pharma AG, dated as of the Closing Date, in substantially the form attached hereto as Exhibit G.

“*Assumed Contracts*” has the meaning set forth in Section 2.01(a).

“*Assumed Liabilities*” has the meaning set forth in Section 3.01(a).

“*Audit Termination Date*” has the meaning set forth in Section 4.02(c).

“*Bill of Sale*” means the Bill of Sale and Assignment and Assumption Agreement to be dated the Closing Date conveying the Purchased Assets from EPI to the Acquiror and providing for the assignment to and assumption of the Assumed Liabilities by the Acquiror, substantially in the form attached hereto as Exhibit A.

“*Books and Records*” means all books, records, files and documents (including financial, sales, pricing, promotional, regulatory, pharmacovigilance, research and development

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

and expense records, customer lists, customer (including government) Product utilization and rebate or chargeback records (including invoices from customers), “best price” (as defined under the Social Security Act, 42 U.S.C. § 1396r-8(c)(1)(C)) and “average manufacturer price” (as defined under the Social Security Act, 42 U.S.C. § 1396r-8(k)(1)) data, credit and collection records and miscellaneous records with respect to customers and supply sources correspondence and, to the extent not originals, true and complete copies of all files relating to the filing, prosecution, issuance, maintenance, enforcement or defense of any Patents, Patent applications, Trademarks, Copyrights or other intellectual property rights, including written third party correspondence, records and documents related to research and pre-clinical and clinical testing and studies for the Product conducted by or on behalf of EPI or its Affiliates) in all forms, including electronic, in which they are stored or maintained, and all data and information included therein, in each case that are licensed, owned or controlled by or otherwise in the possession of EPI or any of its Affiliates.

“*Business*” means the research, development, exploitation, licensing, distribution, marketing, sale, promotion, importation and use of the Products in the Territory.

“*Business Day*” means a day other than Saturday, Sunday or any day on which commercial banks located in New York are authorized or obligated by Law to close.

“*Charter Documents*” means, with respect to a Person, the certificate of incorporation, bylaws or other similar governing instruments and organizational documents of such Person.

“*Closing*” has the meaning set forth in Section 5.01.

“*Closing Consideration*” has the meaning set forth in Section 4.01(a).

“*Closing Date*” has the meaning set forth in Section 5.01.

“*Closing Date Inventory Value*” means the value of all Inventory as of the Closing Date, such value determined pursuant to the methods described on Schedule 1.01(a) of the Elan Disclosure Schedule.

“*Closing Date Inventory Value Adjustment*” means the Closing Date Inventory Value *minus* the Estimated Closing Date Inventory Value.

“*Closing Date Inventory Value Statement*” has the meaning set forth in Section 4.08(a).

“*Code*” means the Internal Revenue Code of 1986, as amended.

“*Confidential Information*” has the meaning set forth in Section 8.04(b).

“*Confidentiality Agreement*” has the meaning set forth in Section 8.04(f).

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

“*Contracts*” means any and all binding commitments, contracts, purchase orders, leases, licenses, easements, commitments, arrangements, undertakings or other agreements, whether written or oral.

“*Control*” means:

- (a) ownership (directly or indirectly) of at least fifty percent (50%) of the shares of stock entitled to vote for the election of directors in the case of a company or corporation;
- (b) the ability (directly or indirectly) otherwise to direct and control the actions of a Person.

“*Copyrights*” means (a) all copyrights in the Territory (including copyrights in any content, package inserts, marketing or promotional material, labeling information or other text provided to consumers), whether registered or unregistered; (b) any registrations, and applications therefor; (c) all rights and priorities to copyrights in the Territory afforded under any international treaty or convention; (d) all copyright extensions and renewals in the Territory; (e) any rights similar to the foregoing in the Territory, including moral rights; (f) all proceeds of the foregoing, including licenses, royalties, income and payments; and (g) the right to sue for past, present and future infringements of any of the foregoing and all proceeds of such suits, provided that any such proceeds of suit shall be proportionately divided among EPI and the Acquiror based on the duration of infringing activity prior to and following the Closing if EPI agrees prior to the commencement of such suit to bear its pro rata share of the costs of prosecuting the claim relating to such activity calculated on the same basis.

“*Corporate Names*” has the meaning set forth in Section 8.09(b).

“*Damages*” has the meaning set forth in Section 11.02(a).

“*Default*” means (a) a breach, default or violation, (b) the occurrence of an event that with or without the passage of time or the giving of notice, or both, would constitute a breach, default or violation or cause an Encumbrance to arise; or (c) with respect to any Contract, the occurrence of an event that with or without the passage of time or the giving of notice, or both, would give rise to a right of termination, renegotiation or acceleration or a right to receive Damages or a payment of penalties.

“*Domain Name Assignment Agreement*” means the Domain Name Assignment Agreement to be dated as of the Closing Date by and between the Acquiror and EPI, substantially in the form attached hereto as Exhibit B.

“*Domain Names*” means the domain names set forth on Schedule 1.01(b) of the Elan Disclosure Schedule, and all associated portals and websites solely associated with the Products.

“*Due Date*” has the meaning set forth in Section 4.02(b).

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

“*Elan Companies Proceeding*” means any Action or Proceeding commenced by or against any of EPI or any of its Affiliates or officers or directors prior to the date of this Agreement.

“*Elan Disclosure Schedule*” has the meaning set forth in the preamble to Article VI.

“*Elan Governmental Consents*” has the meaning set forth in Section 6.03(a).

“*Elan Third Party Consents*” has the meaning set forth in Section 6.03(b).

“*Eligible Claim*” has the meaning set forth in Section 11.03(a).

“*Encumbrance*” means any mortgage, pledge, assessment, security interest, deed of trust, lease, lien, levy, license, restriction on transferability, defect in title, charge or other encumbrance of any kind, or any conditional sale or title retention agreement or other agreement to give any of the foregoing in the future.

“*EPI*” has the meaning set forth in the preamble.

“*EPI Contract*” means any Contract to which EPI or any of its Affiliates is a party or by which EPI or any of its Affiliates is bound or benefited, or under which EPI or any of its Affiliates has any rights.

“*EPI Indemnitees*” has the meaning set forth in Section 11.02(b).

“*EPI Royalty Term*” has the meaning set forth in Section 4.02(a)(i).

“*Estimated Closing Date Inventory Value*” means the value of all Inventory as of the Closing Date, valued in accordance with the definition of “Closing Date Inventory Value” in EPI’s reasonable and good faith estimation.

“*Excluded Assets*” has the meaning set forth in Section 2.02.

“*Excluded Books and Records*” means all Books and Records related to (i) human resources and any other employee-related files and records, (ii) financial and accounting records, (iii) any items set forth on Schedule 1.01(c) of the Elan Disclosure Schedule, (iv) any tax files, documents, instruments, papers, books or records, and (v) the filing, prosecution, issuance, maintenance, enforcement or defense of any Patents, Patent applications, Trademarks, Copyrights or other intellectual property rights comprising Excluded intellectual Property.

“*Excluded Intellectual Property*” means any intellectual property rights, including any patent, copyright, trademark, trade secret or other proprietary rights, that are owned or controlled by EPI or any of its Affiliates, relating to technology that is (a) contained in the Products and other pharmaceutical products owned or controlled by EPI or any of its Affiliates, including “SODAS” technology used in Zanaflex Capsules, or (b) used in the manufacture of Zanaflex Capsules, but in no event shall the Excluded Intellectual Property include any of the Purchased Intellectual Property or Product Trademarks.

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

“*Excluded Liabilities*” has the meaning set forth in Section 3.01(b).

“*Expiration Date*” has the meaning set forth in Section 11.01(a).

“*Final Milestone Payment Date*” has the meaning set forth in Section 4.03(b).

“*FDA*” means the United States Food and Drug Administration or any successor thereto.

“*FDA Act*” means the U.S. Federal Food, Drug and Cosmetic Act of 1938, as it may be superseded or amended from time to time, and the related rules, regulations, guidelines, requirements of the FDA as may be in effect from time to time.

“*Final Milestone Payment Date*” has the meaning set forth in Section 4.03(b).

“*FSS*” has the meaning set forth in Section 8.05(d).

“*Governmental or Regulatory Authority*” means the United States, Canada, any Member State of the European Union, any other country, any supranational organization, any state, province, county, city or other political subdivision of any of the foregoing or any court, tribunal, arbitrator, authority, agency, commission, ministry, official or other instrumentality of any of the foregoing.

“*Governmental Permits*” means all permits, licenses, registrations, certificates of occupancy, approvals and other authorizations of any Governmental or Regulatory Authority, including INDs, NDAs and other approvals of or registrations with any Governmental or Regulatory Authority for the investigation, sale, distribution and/or marketing of products.

“*Gross Sales*” means the gross amount invoiced on sales by the Acquiror, its Affiliates and marketing, promotion and distribution partners to independent, third party customers in bona fide, arms-length transactions.

“*Improvement*” means any present and future invention, improvement, discovery, modification or other development relating to a Product, including any new uses or formulations for a Product, and all intellectual property rights in any of the foregoing, that are owned by EPI or any Affiliate at any time after the Closing; *provided*, that the parties acknowledge and agree that, subject to the obligations set forth in the Supply Agreement, neither EPI nor any of its Affiliates shall have any obligation after the Closing to conduct any research or development relating to the Products.

“*IND*” means (a) an Investigational New Drug Application, as defined in the FDA Act, as amended, and the regulations promulgated thereunder (C.F.R. Parts 312-312.38), which is required to be filed (except under circumstances as described in such regulations promulgated thereunder) with the FDA before beginning clinical testing of a product in human subjects, or any successor application or procedure, and (b) all supplements and amendments that may be filed with respect to the foregoing.

“*Indemnification Claim Notice*” has the meaning set forth in Section 11.02(c).

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

“*Indemnified Party*” has the meaning set forth in Section 11.02(c).

“*Indemnitees*” has the meaning set forth in Section 11.02(c).

“*Interim Services Agreement*” shall mean the Interim Services Agreement by and between EPI and the Acquiror, dated as of the Closing Date, in substantially the form attached hereto as Exhibit C.

“*Inventory*” means all inventory of finished Products (including samples) having a shelf life of greater than 12 months from the Closing Date, together with the inventory of finished Products having a shelf life of less than 12 months from the Closing Date described on Schedule 1.01(a) of the Elan Disclosure Schedule.

“*Know-How*” means any proprietary or nonproprietary information directly related to the manufacture, preparation, development (including research, both pre-clinical and clinical), promotion, exploitation, marketing, use, sale or other commercialization of a product, including related to regulatory matters.

“*Knowledge*” of a particular fact or other matter means: (i) with respect to any individual: (A) the actual knowledge of such individual concerning such fact or other matter; and (B) the knowledge that a prudent individual would be expected to discover or otherwise become aware of in the course of conducting a reasonable investigation concerning the existence of such fact or other matter, and (ii) with respect to EPI or the Acquiror, the Knowledge concerning such fact or other matter of (1) the officers of such Person, (2) the directors of such Person, and (3) the senior managers of such Person with responsibility for, or supervision of, the relevant matters; *provided* that under no circumstances shall Knowledge of EPI include any knowledge not actually known to such persons but imputed to such persons or EPI due to its relationship with Novartis or its representatives; and provided, further, that none of such persons shall have any obligation as a result of entering into (or any provision of) this Agreement, the Supply Agreement or any Related Agreement to make any inquiries of Novartis or its representatives regarding any matter.

“*Labeling*” has the meaning set forth in Section 201(m) of the FDA Act, 21 U.S.C. § 321(m) and any related rule, regulation, guideline or guidance of the FDA, and shall include the applicable Products’ label, packaging and package inserts accompanying such Products, and any other written, printed, or graphic materials accompanying such Products, including patient instructions or patient indication guides and the NDC numbers relating to the Products.

“*Law*” means any federal, state, local or foreign law, statute or ordinance, or any rule, regulation or regulatory requirement promulgated by any Governmental or Regulatory Authority.

“*Liability*” means any direct or indirect liability, obligation, claim, guarantee or commitment of any kind or nature (whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated or due or to become due), including any liability for Taxes.

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

*“Material Adverse Effect”* means an event, circumstance, effect or condition that individually or when taken together with all other events, circumstances, effects or conditions has bad or would reasonably be expected to have more than an immaterial adverse effect (i) on the business, assets, Liabilities, results of operations or financial condition of the Business, other than any event, circumstance, effect or condition relating primarily (x) to the economy in general, *provided*, that such event, circumstance, effect or condition does not have a materially disproportionate effect on the business, assets, Liabilities, results of operations or financial condition of the Business, or (y) in general to the pharmaceutical industry in which the Business operates and not specifically relating to the Products or the Business, provided, that such event, circumstance, effect or condition does not have a materially disproportionate effect on the business, assets, Liabilities, results of operations or financial condition of the Business; (ii) on any of the Products or the Purchased Assets; or (iii) on the ability of EPI to perform its obligations under this Agreement, the Supply Agreement or any Related Agreement or on the ability of EPI to consummate the transactions contemplated hereby and thereby; *provided, however,* that the entry into the marketplace of a generic equivalent to any of the Products shall not be a Material Adverse Effect.

“*Milestone Audit Termination Date*” has the meaning set forth in Section 4.03(b).

“*Milestone Payments*” has the meaning set forth in Section 4.03(a)(v).

“*Multi-Product Contract*” has the meaning set forth in Section 8.06.

“*NDA*” means a New Drug Application for any product, as appropriate, requesting permission to place a drug on the market in accordance with 21 U.S.C. § 355 and 21 C.F.R. Part 314, and all supplements or amendments filed pursuant to the requirements of the FDA, including all documents, data and other information concerning a product which are reasonably necessary for FDA approval to market a product in the United States, and all correspondence with the FDA relating to the foregoing.

“*Net Sales*” shall mean Gross Sales less customs duties or other taxes (excluding income or corporation tax), returns (including returns in connection with rejections and recalls), Administrative Fees, rebates, chargebacks, allowances for bad debt and discounts, in each case related to such sales.

“*Non-Assignable Contract*” has the meaning set forth in Section 2.04(a).

“*Notice*” means any notice given in accordance with the terms of Section 13.01 of this Agreement.

“*Notice of Objection*” has the meaning set forth in Section 4.08(b).

“*Novartis License Agreement*” means that certain license agreement dated as of April 17th, 1991, as amended, by and between Novartis Pharma AG (together with its Affiliates, “Novartis”), as successor to Sandoz Pharma Ltd., and EPI, as successor to Athena Neurosciences, Inc.

“*Novartis Royalty Term*” has the meaning set forth in Section 4.02(a)(i).

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

*“Order”* means any writ, judgment, decree, injunction or similar order, including consent orders, of any Governmental or Regulatory Authority (in each such case whether temporary, preliminary or final).

*“Ordinary Course of Business”* means an action that is in compliance with applicable Laws and is consistent in nature, scope and magnitude with the past practices of EPI and its Affiliates with respect to the Business as conducted by EPI including any action necessary or desirable for EPI or its Affiliates to enforce its rights and perform its obligations under the Novartis License Agreement.

*“Patent Assignment Agreement”* means the Patent Assignment Agreement to be dated as of the Closing Date by and between the Acquiror and EPI, substantially in the form attached hereto as Exhibit D.

*“Patent Rights”* means solely in the Territory and relating to any Product, the rights conferred or represented by a Patent.

*“Patents”* means: (a) all patents and patent applications, including provisional patent applications; (b) all patent applications filed either from such patents, patent applications or provisional applications or from an application claiming priority from either of these, including divisionals, continuations, continuations-in-part, substitutions, provisionals, converted provisionals, and continued prosecution applications; (c) any and all patents that have issued or in the future issue from the foregoing patent applications described in clauses (a) and (b), including utility models, petty patents and design Patents and certificates of invention; (d) any and all extensions or restorations by existing or future extension or restoration mechanisms, including revalidation, reissues, re-examinations and extensions (including any supplementary protection certificates and the like) of the foregoing patents or patent applications described in clauses (a), (b) and (c); (e) all proceeds of the foregoing, including licenses, royalties, income and payments; and (f) the right to sue for past, present and future infringements of any of the foregoing and all proceeds of such suits, provided that any such proceeds of suit shall be proportionately divided among EPI and the Acquiror based on the duration of infringing activity prior to and following the Closing if EPI agrees prior to the commencement of such suit to bear its pro rata share of the costs of prosecuting the claim relating to such activity calculated on the same basis.

*“Permitted Encumbrance”* means, collectively, (a) liens for Taxes or assessments that are not delinquent and that do not individually or in the aggregate materially detract from the value or impair the use or operation of the property or asset affected thereby as currently used or operated, (b) mechanics’, carriers’, workmen’s, landlord’s or other like statutory liens arising or incurred in the ordinary course of business which are not yet delinquent and that do not individually or in the aggregate materially detract from the value or impair the use or operation of the property or asset affected thereby as currently used or operated, and (c) restrictions under zoning, building, fire, health, environmental and pollution control Laws that do not individually or in the aggregate materially detract from the value or impair the use or operation of the property or asset affected thereby as currently used or operated.

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

“*Person*” means any natural person, corporation, general partnership, limited partnership, limited liability company, proprietorship, joint venture, other business organization, trust, entity, union, association or Governmental or Regulatory Authority.

“*Pre-Closing Tax Period*” means all taxable periods ending on or before the Closing Date and the portion ending on the Closing Date of any taxable period that includes (but does not end on) the Closing Date.

“*Product Books and Records*” shall mean all of the Books and Records relating exclusively to the Products or that are necessary for the conduct of the Business in the Territory, Including the Product Marketing Materials but excluding the Excluded Books and Records.

“*Product Copyrights*” means all Copyrights, set forth on Schedule 1.01(d) of the Elan Disclosure Schedule.

“*Product Know-How*” means all Know-How set forth on Schedule 1.01(e) of the Elan Disclosure Schedule, but in no event shall this definition of “Product Know How” include any Excluded Intellectual Property or any information properly in the public domain as of the Closing Date.

“*Product Marketing Materials*” means all of the advertising, promotional and training materials solely relating to the Products in the possession of EPI or its Affiliates as of the Closing Date.

“*Product Patent Rights*” means the Patents in the Territory set forth on Schedule 1.01(f) of the Elan Disclosure Schedule, and all Patent Rights associated with such Patents. Notwithstanding the foregoing, “Product Patient Rights” shall not include any inchoate inventions not yet reduced to practice, all of which, subject to the license granted pursuant to Section 2.02, shall remain the exclusive property of EPI.

“*Product Registrations*” means (i) the approvals or registrations which have been received by EPI before the Closing Date, for the investigation, sale, distribution and/or marketing of the Products in the Territory (including any NDAs or INDs), and (ii) all dossiers, reports, data and other written materials filed as part of such approvals or registrations, or maintained by EPI and relating to such approvals or registrations.

“*Products*” means Zanaflex Tablets and Zanaflex Capsules, along with any other pharmaceutical products containing the compound tizanidine as their active pharmaceutical ingredients to which EPI has ownership rights.

“*Product Trademark*” means the Trademarks in the Territory set forth on Schedule 1.01(g) of the Elan Disclosure Schedule.

“*Purchased Assets*” has the meaning set forth in Section 2.01.

“*Purchased Governmental Permits*” means all Governmental Permits necessary for the operation of the Business by EPI that are held in the name of EPI or any of its Affiliates.

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

“*Purchased Intellectual Property*” means the Product Copyrights, the Product Patent Rights, the Product Know-How and the Domain Names; provided that, notwithstanding anything to the contrary contained herein, in no event shall Purchased Intellectual Property include any Excluded Intellectual Property.

“*Rebates and Chargebacks Termination Date*” means the date that is ninety (90) days after the Closing Date.

“*Related Agreements*” means the Bill of Sale, the Assignment and Assumption Agreement, the Interim Services Agreement, the Patent Assignment Agreement, the Trademark License Agreement and the Domain Name Assignment Agreement.

“*Returns Termination Date*” means the date that is one hundred and eighty (180) days after the Closing Date.

“*Royalty Payments*” has the meaning set forth in Section 4.02(a).

“*Royalty Term*” has the meaning set forth in Section 4.02(a).

“*Subsidiary*” of a Person means any entity Controlled by that Person.

“*Supply Agreement*” means the Supply Agreement to be dated as of the Closing Date by and between the Acquiror and EPI or one or more of its Affiliates, substantially in the form at attached hereto as Exhibit E.

“*Taxes*” means all of the following in connection with the operation of the Business or the transactions contemplated hereby: (i) any net income, withholding, deduction, alternative or add-on minimum tax, gross income, gross receipts, sales, use, value added ad valorem, transfer, franchise, profits, license, excise, severance, stamp, occupation, premium, property, environmental or windfall profit tax, capital tax, customs duty or other tax, governmental fee or other like assessment, together with any interest, penalty or additional amount due, imposed by any governmental, regulatory or administrative entity or agency responsible for the imposition of any such tax (domestic or foreign); (ii) any Liability for the payment of any amounts of the type described in (i) as a result of being a member of any affiliated, consolidated, combined, unitary or other group for any taxable period; and (iii) any Liability for the payment of any amounts of the type described in (i) or (ii) as a result of any express or implied obligation to indemnify any other Person.

“*Termination Date*” has the meaning set forth in Section 12.01(b).

“*Territory*” means the United States of America, its territories and possessions and the Commonwealth of Puerto Rico.

“*Third Party Intellectual Property*” means any intellectual property rights, including any patent, copyright, trademark, trade secret or other proprietary rights, that are owned or controlled by any Person other than a party to this Agreement.

“*Third Party Claim*” has the meaning set forth in Section 11.02(d).

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

“*Trademark License Agreement*” means the Trademark License Agreement to be dated as of the Closing Date by and between the Acquiror and EPI, substantially in the form attached hereto as Exhibit F.

“*Trademarks*” means: (a) all trademarks, trade names, trade dress, service marks, logos and designs, whether registered or unregistered; (b) all registrations and applications for any of the foregoing; (c) all extensions or renewals of any of the foregoing; (d) all of the goodwill connected with the use of and symbolized by the foregoing; (e) all proceeds of the foregoing, including licenses, royalties, income and payments; and (f) the right to sue for past, present and future infringements of any of the foregoing and all proceeds of such suits, provided that any such proceeds of suit shall be proportionately divided among EPI and the Acquiror based on the duration of infringing activity prior to and following the Closing if EPI agrees, prior to the commencement of such suit to bear its pro rata share of the costs of prosecuting the claim relating to such activity calculated on the same basis.

“*Trademark Purchase*” has the meaning set forth in Section 4.04.

“*Transfer Taxes*” has the meaning set forth in Section 4.06.

“*Zanaflex Capsules*” means pharmaceutical products containing tizanidine as their active pharmaceutical ingredients currently approved by the FDA pursuant to NDA No. 21-447 to be marketed in the Territory under the trademark Zanaflex.

“*Zanaflex Tablets*” means pharmaceutical products containing tizanidine as their active pharmaceutical ingredients currently approved by the FDA pursuant to NDA No. 20-397 and marketed in the Territory under the trademark Zanaflex.

Section 1.02. Construction of Certain Terms and Phrases. Unless the context of Agreement otherwise requires:  
(a) words of any gender ‘include each-other gender; (b) words using the singular or plural number also include the plural or singular number, respectively; (c) the terms “hereof,” “herein,” “hereby” and derivative or similar words refer to this entire Agreement; (d) the terms “Article” or “Section” refer to the specified Article or Section of this Agreement; (e) the term “or” has, except where otherwise indicated, the inclusive meaning represented by the phrase “and/or”; (f) “\$” means United States dollars; and (g) the term “including” means “including without limitation.” Whenever this Agreement refers to a number of days, such number shall refer to calendar days unless Business Days are specified.

## **ARTICLE II**

### **PURCHASE AND SALE OF ASSETS**

Section 2.01. Purchase and Sale of Assets at the Closing. Upon the terms and subject to the conditions set forth in this Agreement, at the Closing, EPI shall sell, convey, assign, transfer and deliver to the Acquiror, and the Acquiror shall purchase and acquire from EPI, all of EPI’s right, title and interest in and to the following assets, free and clear of all Encumbrances, other than Permitted Encumbrances (collectively, the “*Purchased Assets*”):

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

(a) the rights of EPI and its Affiliates under each of the Contracts set forth on Schedule 2.01(a) of the Elan Disclosure Schedule (the “*Assumed Contracts*”), subject to the terms and conditions set forth in the Assignment and Assumption Agreement;

- (b) all Product Books and Records;
- (c) all Inventory;
- (d) all Purchased Intellectual Property;
- (e) all Product Registrations;
- (f) all Purchased Governmental Permits, to the extent legally transferable; and
- (g) any other assets set forth on Schedule 2.01(8) of the Elan Disclosure Schedule;

*provided, however,* that notwithstanding anything to the contrary contained herein, EPI shall not be required to transfer physical possession of any Purchased Assets to the Acquiror to the extent any of such Purchased Assets are necessary for EPI to perform its obligations under the Interim Services Agreement (it being understood that (i) EPI will transfer physical possession of such Purchased Assets to the Acquiror as soon as is practicable after such obligations are fully performed, and (ii) as long as EPI retains physical possession of any Purchased Assets, EPI shall, upon request of the Acquiror, provide the Acquiror with immediate access to and copies of such Purchased Assets (at Acquiror’s expense and provided that such access does not unreasonably interfere with the business or operations of EPI or its Affiliates).

Section 2.02. Excluded Assets; License to Excluded Intellectual Property. Notwithstanding anything to the contrary contained in this Agreement, from and after the Closing, EPI shall retain all of its right, title and interest in and to all of its assets; other than the Purchased Assets (the “*Excluded Assets*”), including:

- (a) all cash and cash Equivalents of EPI or any of its Affiliates;
- (b) all Accounts Receivable of EPI or any of its Affiliates;
- (c) the Corporate Names;
- (d) the Product Trademarks;
- (e) all Excluded Intellectual Property;
- (f) any refund or credit of Taxes attributable to any Pre-Closing Tax Period;
- (g) all Books and Records other than the Product Books and Records; and
- (h) all tangible personal property owned by EPI and used outside of, or not exclusively in connection with, the Business as of the Closing Date.

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

EPI hereby grants to the Acquiror an exclusive, perpetual, royalty-free license, with the right to sublicense, to use (i) the Excluded Intellectual Property (including any inchoate inventions not yet reduced to practice), (ii) any other intellectual property owned by EPI or any of its Affiliates that is necessary to conduct the Business, and (iii) any Improvements to the intellectual property described in clauses, “(i)” and “(ii)” of this sentence solely for the purposes of importing Products into the Territory and using, modifying, exploiting, researching, distributing, developing, marketing, selling, offering for sale and otherwise commercializing Products in the Territory. In addition, at the Closing, EPI and the Acquiror will enter into the Trademark License Agreement.

Section 2.03. Retention of Copies of Certain Assets. Notwithstanding anything to the contrary contained in this Agreement, EPI may retain, at its expense, archival copies of all Assumed Contracts, Product Books and Records and other documents or materials conveyed hereunder; *provided, however,* that EPI shall maintain such items in accordance with the provisions of Section 8.04.

## **ARTICLE III**

### **ASSUMPTION OF LIABILITIES**

Section 3.01. Assumption of Liabilities. (a) Upon the terms and subject to the conditions set forth in this Agreement, the Interim Services Agreement and the Bill of Sale, subject to Section 3.01(b), Section 8.05 and the terms and conditions set forth in the Supply Agreement, and excluding any Liabilities represented, warranted or disclosed by EPI under Article VI (other than with respect to obligations under the Assumed Contracts), as of the Closing, the Acquiror agrees to assume, satisfy, perform, pay and discharge each of the following Liabilities (the “*Assumed Liabilities*”):

- (i) all Liabilities of EPI or any of its Affiliates solely arising out of any product liability, patent infringement, breach of warranty or similar claim for injury to person or property which resulted from the use or misuse of Products sold directly by the Acquiror (or its Affiliates, sublicensees and marketing, promotion or distribution partners) at any time after the Closing (including all Actions or Proceedings relating to any such Liabilities);
- (ii) all Liabilities of EPI or any of its Affiliates under the Assumed Contracts, subject to the terms and conditions set forth in the Assignment and Assumption Agreement, but only to the extent that such Liabilities arise from any event, circumstance or condition occurring after the Closing;
- (iii) all Liabilities of EPI or any of its Affiliates solely arising out of government seizures, field corrections, withdrawals or recalls of Products to the extent that such Products were sold directly by the Acquiror (or its Affiliates, sublicensees and marketing, promotion or distribution partners) at any time after the Closing;

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

(iv) subject to clause "(i)" above, all liabilities of EPI or any of its Affiliates with respect to any litigation or other claims solely arising out of or relating to the conduct of the Business by the Acquiror or its Affiliates after the Closing;

(v) all Liabilities of EPI or any member of any affiliated group of which EPI is a member for Taxes solely arising out of or relating to the Purchased Assets (including the Products) (to the extent arising out of any event, circumstance or condition occurring after the Closing), the ownership, research, development, sale or lease of any of the Purchased Assets by the Acquiror or its Affiliates after the Closing or the operation of the Business by the Acquiror or its Affiliates after the Closing;

(vi) all Liabilities of EPI or any of its Affiliates solely arising out of user or other similar fees payable to the FDA or any other Governmental or Regulatory Authority to the extent that such fees are due and payable on account of the operation of the Business by the Acquiror or its Affiliates after the Closing (and to the extent that EPI or any of its Affiliates has paid any such fee prior to the Closing, the Acquiror shall promptly reimburse EPI or such Affiliate for such payment or prorated portion thereof); and

(vii) all other Liabilities of EPI or any of its Affiliates solely arising out of or relating to the Purchased Assets (including the Products)(to the extent arising out of any event, circumstance or condition occurring after the Closing), the ownership, research, development, sale or lease of any of the Purchased Assets by the Acquiror or its Affiliates after the Closing or the operation of the Business by the Acquiror or its Affiliates after the Closing to the extent arising out of any event, circumstance or condition occurring after the Closing.

For greater clarity, the parties acknowledge and agree that, notwithstanding anything to the contrary contained in this Section 3.01(a), if any Liabilities that arise from any event, circumstance or condition occurring after the Closing relate to or in any way involve any Products that have been sold, the Acquiror shall only assume those Liabilities arising from those Products sold directly at any time after the Closing by the Acquiror (or its Affiliates, sublicensees and marketing, promotion or distribution partners), and EPI shall retain all Liabilities arising from those Products sold directly at any time prior to the Closing by EPI (or its Affiliates, sublicensees and marketing, promotion or distribution partners).

(b) Notwithstanding anything contained in this Agreement to the contrary including Section 3.01(a)) and subject to the terms and conditions of Section 8.05, the Supply Agreement and the Interim Services Agreement, EPI shall retain an of the following Liabilities ("Excluded Liabilities "):

(i) all accounts payable of EPI and its Affiliates;

(ii) all Liabilities of EPI and its Affiliates with respect to the manufacture, processing, packaging, testing, sale or holding of any inventory or of the Products prior to the Closing;

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

- (iii) all Liabilities under the Assumed Contracts, but only to the extent such Liabilities arise from any event, circumstance or condition occurring prior to the Closing;
- (iv) (A) all Liabilities for Taxes payable with respect to any business, assets, property or operation of EPI or any member of any affiliated group of which EPI is or has been a member, and (B) all Liabilities for Taxes relating to or arising out of the Purchased Assets (including the Products), the ownership, research, development, sale or lease of any of the Purchased Assets by EPI or the operation of the Business by EPI attributable to any Pre-Closing Tax Period, other than any Transfer Tax for which the Acquiror is responsible pursuant to Section 4.04;
- (v) all Liabilities of EPI or any of its Affiliates arising out of any product liability, patent infringement, breach of warranty or similar claim for injury to person or property which resulted from the use or misuse of Products sold directly by EPI (or its Affiliates, sublicensees and marketing, promotion or distribution partners) at any time prior to the Closing (including all Actions or Proceedings relating to any such Liabilities);
- (vi) all Liabilities of EPI or any of its Affiliates arising out of government seizures, field corrections, withdrawals or recalls of Products that are sold directly by EPI (or its Affiliates, sublicensees and marketing, promotion or distribution partners) at any time prior to the Closing;
- (vii) subject to clause "(v)" above, all Liabilities of EPI or any of its Affiliates with respect to any litigation or other claims arising out of or relating to the conduct of the Business by EPI or its Affiliates prior to the Closing,
- (viii) all Liabilities of EPI or any of its Affiliates arising out of user or other similar fees payable to the FDA or other Governmental or Regulatory Authority to the extent that such fees are due and payable on account of the operation of the Business prior to the Closing (and to the extent the Acquiror or any of its Affiliates has paid any such fee after the Closing, EPI shall promptly reimburse the Acquiror or such Affiliate for such payment or prorated portion thereof); and
- (ix) any other Liability of EPI or any of its Affiliates that is not listed as an Assumed Liability under Section 3.01(a).

## ARTICLE IV

### CONSIDERATION AND PAYMENT

Section 4.01. Closing Consideration. As consideration for the Purchased Assets, at the Closing, the Acquirer shall:

- (a) deliver or cause to be delivered to EPI the sum of [\*\*\*] *plus* the Estimated Closing Date Inventory Value set forth in the statement referred to in Section 4.08(a) (together, the "*Closing Consideration*") by electronic funds transfer of immediately available funds to the account specified by EPI; and

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

(b) assume the Assumed Liabilities.

The Closing Consideration shall be exclusive of any value added tax which, if urged, shall be payable by Acquiror.

Section 4.02. Royalty for Products. (a) The Acquiror shall pay to EPI royalties (the royalty payments referred-to in this Section 4.02(a) being referred to as the “*Royalty Payments*”) of:

(i) [\*\*\*] of the Net Sales of Zanaflex Capsules in the Territory during the period beginning on the Closing Date and ending on the date of termination of all obligations to pay royalties under the Novartis License Agreement with respect to sales of Zanaflex Capsules (the “*Novartis Royalty Term*”);

(ii) [\*\*\*] of the Net Sales of Zanaflex Tablets in the Territory during the period beginning on the Closing Date and ending on the later of (A) the tenth (10th) anniversary of the Closing Date or (B) the date of expiration of the last Patent to expire included within the Product Patent Rights (the “*EPI Royalty Term*”); *provided, however,* that notwithstanding the foregoing, no royalty shall be due and payable under this Section 4.02(a)(ii) with respect to Net Sales of Zanaflex Tablets arising from Acquiror 2004 Gross Sales that exceed [\*\*\*]; and

(iii) [\*\*\*] of the Net Sales of Zanaflex Capsules in the Territory during the period beginning on the termination of the Novartis Royalty Term and ending on the termination of the EPI Royalty Term.

(b) Royalty Payments shall be made on a quarterly basis by the Acquiror in United States dollars on or prior to the date that is forty-five (45) days after the end of each calendar quarter (each such date, a “*Due Date*”) included within the EPI Royalty Term. Payment shall be by means of wire transfer to an account designated in writing by EPI from time to time.

(c) By each Due Date, the Acquiror shall provide to EPI a true and accurate report of Net Sales of the applicable Products in the Territory for the previous calendar quarter and the calculation of royalties due thereon. Until the date that is two (2) years after the expiration of the EPI Royalty Term (the “*Audit Termination Date*”), the Acquiror shall keep accurate books and records in sufficient detail to enable the royalties payable hereunder to be determined. EPI may demand, no more than once during any calendar year and until the Audit Termination Date, an audit of the relevant books and records of the Acquiror in order to verify the royalties payable hereunder during the previous three (3) year period. Upon no less than fifteen (15) days’ prior written notice to the Acquiror, the Acquiror shall grant reasonable access during normal business hours to members of an internationally recognized independent public accounting firm selected by EPI to such relevant books and records of the Acquiror in order to conduct a review or audit thereof. The accounting firm shall report its conclusions and calculations to EPI and the Acquiror; provided, that in no event shall the accounting firm disclose to EPI any information of the Acquiror except to the extent necessary to verify Net Sales and the royalties payable hereunder and, at the request of the Acquiror, such accounting firm will execute appropriate non-disclosure agreements. Unless the results of an such audit indicate that

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

the Acquiror underpaid royalties due hereunder for any period by greater than [\*\*\*]. EPI shall bear the full cost of the performance of such audit. If the results of any such audit indicate that the Acquiror underpaid royalties due hereunder for any period by greater than [\*\*\*], (i) the Acquiror shall bear the full cost of the performance of such audit and (ii) the Acquiror shall pay to EPI the amount by which the Acquiror underpaid such royalties.

(d) The Acquiror shall pay interest to EPI on Royalty Payments not made to EPI by the applicable Due Date over the period from such Due Date until the date of actual payment (both before and after judgment) at the prime rate publicly announced by Morgan Guaranty Trust Company of New York at its principal office from time to time [\*\*\*] (or, if less, the maximum rate allowed to be charged under applicable laws), such interest to be payable on demand and compounded monthly.

Section 4.03. Milestone Payments : (a) The Acquiror shall make the following payments by means of wire transfer to an account designated in writing by EPI from time to time:

(i) if (and only if) the cumulative Gross Sales from and after the Closing during calendar year 2004 in the Territory of Zanaflex Tablets and Zanaflex Capsules (“*Acquiror 2004 Gross Sales*”) are equal to or greater than [\*\*\*] then the Acquiror shall pay to EPI an amount equal to one-half of such Acquiror 2004 Gross Sales, subject to a maximum amount to be paid to EPI under this Section 4.03(a)(i) of [\*\*\*] according to the following schedule: (A) one-half of such amount to be paid to EPI shall be paid on March 31, 2005, and (B) the remainder shall be paid on March 31, 2006;

(ii) if (and only if) the cumulative Gross Sales from and after the Closing in the Territory of Zanaflex Tablets and Zanaflex Capsules are equal to or greater than [\*\*\*] then the Acquiror shall pay [\*\*\*] to EPI upon the later of (A) the date that is 45 days following the end of the calendar quarter in which such target is met and (B) March 31, 2006;

(iii) if (and only if) the cumulative Gross Sales from and after the Closing in the Territory of Zanaflex Table and Zanaflex Capsules are equal to or greater than [\*\*\*] then the Acquiror shall pay [\*\*\*] to EPI within 45 days following the end of the calendar quarter in which such target is met;

(iv) if (and only if) the cumulative Gross Sales from and after the Closing in the Territory of Zanaflex Tablets and Zanaflex Capsules are equal to or greater than [\*\*\*], then the Acquiror shall pay [\*\*\*] to EPI within 45 days following the end of the calendar quarter in which such target is met; and

(v) if (and only if) the cumulative Gross Sales from and after the Closing in the territory of Zanaflex Tablets and Zanaflex Capsules are equal to or greater than [\*\*\*] then the Acquiror shall pay [\*\*\*] to EPI within 45 days following the end of the calendar quarter in which such target is met (the payments referred to in clauses “(i),” “(ii),” “(iii),” “(iv)” and “(v)” being referred to as the “*Milestone Payments*”).

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

(b) By the date that is 45 days after the end of each calendar quarter until the quarter in which the last to be paid of the Milestone Payments is made (the “*Final Milestone Payment Date*”), the Acquiror shall provide to EPI a true and accurate report of Gross Sales of the applicable Products in the Territory for the previous calendar quarter. Until the date that is six (6) months after the Final Milestone Payment Date (the “*Milestone Audit Termination Date*”), the Acquiror shall keep accurate books and records in sufficient detail to enable the Milestone Payments to be determined. EPI may demand, no more than once during any calendar year and until the Milestone Audit Termination Date, an audit of the relevant books and records of the Acquiror in order to verify the Milestone Payments payable hereunder. Upon no less than fifteen (15) days’ prior written notice to the Acquiror, the Acquiror shall grant reasonable access during normal business hours to members of an internationally recognized independent public accounting firm selected by EPI to such relevant books and records of the Acquiror in order to conduct a review or audit thereof. The accounting firm shall report its conclusions and calculations to EPI and the Acquiror; provided, that in no event shall the accounting firm disclose to EPI any information of the Acquiror except to the extent necessary to verify Gross Sales and the Milestone Payments payable hereunder and, at the request of the Acquiror, such accounting firm will execute appropriate non-disclosure agreements. Unless the results of any such audit indicate that the Acquiror failed to pay any Milestone Payment within three (3) months following the date that such Milestone Payment was due, EPI shall bear the full cost of the performance of such audit. If the results of any such audit indicate that the Acquiror has not paid any Milestone Payment, (i) the Acquiror shall bear the full cost of the performance of such audit and (ii) the Acquiror shall make the appropriate Milestone Payment to EPI (to the extent not already paid).

(c) The Acquiror shall pay interest to EPI on Milestone Payments not made to EPI by the applicable due date thereof over the period from such due date until the date of actual payment (both before and after judgment) at the prime rate publicly announced by Morgan Guaranty Trust Company of New York at its principal office from time to time plus [\*\*\*] (or, if less, the maximum rate allowed to be charged under applicable laws), such interest to be payable on demand and compounded monthly.

Section 4.04. Trademark Purchase. At any time on or after the date upon which the Acquiror shall have paid to EPI an aggregate of [\*\*\*] (pursuant to the provisions of Sections 4.01 through 4.03; the Acquiror may elect, in its sole discretion by written notice to EPI, to purchase the Product Trademarks for the purchase price of [\*\*\*] (the “*Trademark Purchase*”). At such time, the parties will cooperate in good faith to execute and deliver such documents, including any trademark assignment agreement required under applicable law, as are necessary or desirable to vest in the Acquiror good and marketable title to the Product Trademarks.

Section 4.05. Allocation of Purchase Price. The Closing Consideration shall be allocated among the Purchased Assets in the manner mutually agreed to by EPI and the Acquiror within thirty (30) days after the Closing Date. Any subsequent adjustments to the consideration paid by the Acquiror for the Purchased Assets (including the Closing Date Inventory Value Adjustment, the Milestone Payments and the Royalty Payments) shall be reflected in such allocation as revised hereunder in manner consistent with Section 1060 of the Code. The Acquiror and EPI agree (a) to report the sale and purchase of the Purchased Assets for Tax

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

purposes in accordance with such allocation and (b) not to take any position inconsistent with such allocation on any of their respective Tax returns. If within a (10) days after the thirty (30)-day period set forth above the parties have not reached agreement, the Accountants shall be engaged to determine the final allocation in dispute. EPI and the Acquiror shall share equally the fees of such Accountants.

Section 4.06. Sales, Use and Other Taxes. All transfer, documentary, sales, use, gross receipts, stamp, duty, registration or other similar transfer taxes (collectively, “*Transfer Taxes*”) incurred in connection with the transfer and sale of the Purchased Assets as contemplated by the terms of this Agreement and the Related Agreements, including all recording or filing fees, notarial fees and other similar costs of Closing that may be imposed, payable, collectible or incurred shall be borne equally by EPI, on the one hand, and by the Acquiror, on the other hand.

Section 4.07. No Tax Withholding. All payments under or contemplated by this Agreement or the Related Agreements will be made without any deduction or withholding for or on account of any taxes.

Section 4.08. Closing Date Inventory Value Adjustments. (a) EPI will deliver to the Acquiror a written statement of the Estimated Closing Date Inventory Value at least two (2) Business Days prior to the Closing Date. As promptly as practicable, but in any event not later than thirty (30) days after the Closing Date, EPI shall prepare and deliver to the Acquiror a statement calculating the Closing Date Inventory Value and the amount of any Closing Date Inventory Value Adjustment (the “*Closing Date Inventory Value Statement*”).

(b) During the sixty (60) day period immediately following the Acquiror’s receipt of the Closing Date Inventory Value Statement, the Acquiror shall be permitted to review EPI’s books and records to the extent reasonably necessary for the Acquiror to evaluate the Closing Date Inventory Value Statement. The Closing Date Inventory Value Statement shall become final and binding upon the Acquiror and EPI at the end of such sixty (60) day period, unless the Acquiror objects to the Closing Date Inventory Value Statement, in which case it shall send written Notice (the “*Notice of Objection*”) to EPI within such period, setting forth in specific detail the basis for its objection and its proposal for any adjustments to the Closing Date Inventory Value Statement. If a timely Notice of Objection is received by EPI, then the Closing Date Inventory Value Statement shall become final and binding on EPI and the Acquiror on the first to occur of (x) the date EPI and the Acquiror resolve in writing any differences they have with respect to the matters specified in the Notice of Objection and (y) the date all matters in dispute are finally resolved in writing by the Accountants, in each case as provided below. EPI and the Acquiror shall seek in good faith to reach agreement as to any such proposed adjustment or that no such adjustment is necessary within thirty (30) days following receipt of the Notice of Objection. If agreement is reached in writing within such thirty (30) day period as to all proposed adjustments, or that no adjustments are necessary, EPI and the Acquiror shall revise the Closing Date Inventory Value Statement accordingly. If EPI and the Acquiror are unable to reach agreement within such thirty (30) day period, then the Accountants shall be engaged at that time to review the Closing Date Inventory Value Statement, and shall make a determination as to the resolution of any adjustments. The determination of the Accountants shall be delivered as soon as practicable following engagement of the Accountants, but in no event more than thirty (30)

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

days thereafter, and shall be final, conclusive and binding upon EPI and the Acquiror, and the parties shall revise the Closing Date Inventory Value Statement accordingly. EPI, on the one hand, and the Acquiror, on the other hand, shall each pay one-half of the cost of the Accountants. Within ten (10) days after the date on which the Closing Date Inventory Value Statement becomes final and binding on EPI and the Acquiror, the Acquiror shall pay the Closing Date Inventory Value Adjustment to EPI, if positive, or EPI shall pay the Closing Date Inventory Value Adjustment to the Acquiror, if negative.

## **ARTICLE V**

### **CLOSING**

Section 5.01. Time and Place. The closing of the transactions contemplated by this Agreement, including the purchase and sale of the Purchased Assets and the assumption of the Assumed Liabilities (the “*Closing*”), shall take place simultaneously with the signing of this Agreement, at the offices of EPI, 7475 Lusk Boulevard, San Diego, CA 92121, unless another place shall be agreed to by the parties. The date on which the Closing actually takes place is referred to as the “*Closing Date*”.

Section 5.02. Deliveries at Closing.

(a) Closing Deliveries by EPI. At the Closing, EPI shall deliver or cause to be delivered to the Acquiror:

- (i) each of the Related Agreements and the Supply Agreement, duly executed and delivered by EPI, and copies of all documents required to be delivered by EPI pursuant to this Agreement, the Related Agreements and the Supply Agreement;
- (ii) a copy of the Assignment and Assumption Agreement, duly executed by Novartis;
- (iii) a copy, of each of the Assumed Contracts; and
- (iv) copies of all Elan Governmental Consents and Elan Third Party Consents.

(b) Closing Deliveries by the Acquiror. At the Closing, the Acquiror will deliver or cause to be delivered to EPI:

- (i) the Closing Consideration in immediately available funds by wire transfer to an account that shall have been designated by EPI not less than two Business Days prior to the Closing Date;
- (ii) each of the Related Agreements to be executed by the Acquiror and the Supply Agreement, duly executed and delivered by the Acquiror, and copies of all documents required to be delivered by the Acquiror pursuant to this Agreement, the Related Agreements and the Supply Agreement;
- (iii) evidence of the insurance coverage described in Section 7.07; and

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

(iv) such instruments of assumption and other instruments or documents, in form and substance reasonably acceptable to EPI and the Acquiror, as may be necessary to effect the Acquirer's assumption of the Assumed Liabilities.

## **ARTICLE VI**

### **REPRESENTATIONS AND WARRANTIES OF EPI**

EPI represents and warrants to the Acquiror that each statement set forth in each of the sections and subsections of this Article VI (each such statement being a "representation and warranty" of the Company) is accurate and complete as of the date hereof (except as to certain representations and warranties which expressly speak as of a different date certain, which shall be accurate and complete as of such date), except as set forth in any disclosure schedule delivered to the Acquiror by EPI on the date of this Agreement corresponding to the particular section or subsection of this Article VI in which such representation and warranty appears (it being understood, however, that a disclosure in a particular disclosure schedule will also be deemed to qualify a representation and warranty that does not appear in the corresponding section or subsection of this, Article VI if such disclosure reasonably relates to such representation and warranty) (All disclosure schedules delivered to the Acquiror by EPI on the date of this Agreement being collectively referred to as the "*Elan Disclosure Schedule*").

Section 6.01. Organization, Etc. EPI is duly organized, validly existing and in good standing under the laws of Delaware and has all requisite power and authority to own its assets and carry on its business as currently conducted by it. EPI is duly authorized to conduct its business and is in good standing in each jurisdiction where such qualification is required, except for any jurisdiction where failure to so qualify would not have a Material Adverse Effect.

Section 6.02. Authority of EPI. EPI (and/or any of its Affiliates, as applicable with respect to Related Agreements and the Supply Agreement) has all necessary corporate power and authority and has taken all actions necessary to enter into, deliver and perform its obligations under this Agreement, the Supply Agreement and the Related Agreements and carry out the transactions contemplated hereby and thereby. The board of directors and stockholders of EPI (and/or any of its Affiliates, as applicable with respect to Related Agreements and the Supply Agreement) have taken all action required by Law and its Charter Documents and otherwise to be taken by it to authorize (a) the execution and delivery of, and performance by it of its obligations under, this Agreement, the Supply Agreement and the Related Agreements and (b) the consummation of the transactions contemplated hereby and thereby. This Agreement has been duly and validly executed and delivered by EPI and, when executed and delivered by the Acquiror, will constitute a legal, valid and binding obligation of EPI, enforceable against it in accordance with its terms, except as such enforceability may be limited by (i) bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or affecting generally the enforcement of creditors' rights and (ii) the availability of equitable remedies (whether in a proceeding in equity or at law). When executed and delivered by EPI and each other party thereto, the Supply Agreement and each Related Agreement will constitute a legal, valid and binding obligation of EPI (and/or any of its Affiliates, as applicable), enforceable against it in accordance with its terms, except as such enforceability may be limited by (i) bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or affecting generally the

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

enforcement of creditors' rights and (ii) the availability of equitable remedies (whether in a proceeding in equity or at law).

Section 6.03. Consents and Approvals. (a) Schedule 6.03(a) of the Elan Disclosure Schedule sets forth a complete and accurate list (the "Elan Governmental Consents") of all consents, waivers, approvals, Orders, permits or authorizations of, or registrations, declarations, payments or filings with, any Governmental or Regulatory Authority that are required by or with respect to EPI or my of its Affiliates in connection with the execution and delivery of this Agreement, the Supply Agreement and the Related Agreements by EPI, the consummation of the transactions contemplated hereby and thereby or the performance of its obligations hereunder and thereunder, except for those consents, waivers, approvals, Orders, permits, authorizations, registrations, declarations, payments or filings which a failure to obtain or make would not have a Material Adverse Effect.

(b) Schedule 6.03(b) of the Elan Disclosure Schedule sets forth a complete and accurate list (the "Elan Third Party Consents") of all consents, waivers, approvals, or authorizations of, or notices to, any Person (other than a Governmental or Regulatory Authority) that are required by or with respect to EPI or any of its Affiliates in connection with the execution and delivery of this Agreement, the Supply Agreement and the Related Agreements by EPI, the consummation of the transactions contemplated hereby and thereby or the performance of its obligations hereunder and thereunder, except for those consents, waivers, approvals, authorizations or notices which a failure to obtain or make would not have a Material Adverse Effect.

Section 6.04. Non-Contravention. The execution and delivery by EPI of this Agreement, the Supply Agreement and the Related Agreements, does not, and the performance by it of its obligations under this Agreement, the Supply Agreement and the Related Agreements and the consummation of the transactions contemplated hereby and thereby will not:

- (a) conflict with or result in a violation or breach of any of the terms, conditions or provisions of the Charter Documents of EPI;
- (b) assuming the receipt of the Elan Governmental Consents, conflict with or result in a violation or breach of any term or provision of any Law or Order applicable to EPI, the Business as conducted by EPI or the Purchased Assets or any Governmental Permit;
- (c) give any Governmental or Regulatory Authority the right to revoke, withdraw, suspend, cancel, terminate or modify, any Governmental Permit relating to the Products, except as would not have a Material Adverse Effect; or
- (d) conflict with or result in a Default under any Assumed Contract, assuming receipt of the Elan Third Party Consents applicable to the Assumed Contracts, except as would not have a Material Adverse Effect.

Section 6.05. Contracts. Schedule 6.05 of the Elan Disclosure Schedule sets forth a complete and correct list of:  
(a) each EPI Contract that relates to the research, development, exploitation, licensing, use, importation, promotion, marketing, sale or distribution of the Products and provides for aggregate annual payments, or has a value in excess, of [\*\*\*];

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

and (b) each other EPI Contract that, if such Contract were to be terminated or otherwise no longer in full force and effect, would have or would reasonably be expected to have a Material Adverse Effect. EPI has delivered to the Acquiror complete and correct copies of all such EPI Contracts and all Assumed Contracts; including all amendments, exhibits, appendices and annexes thereto. Except as would not have a Material Adverse Effect, (a) each of the Assumed Contracts is in full force and effect and constitutes a legal, valid and binding agreement of EPI or its Affiliate, as applicable, and is enforceable in accordance with its terms by EPI or its Affiliate, as applicable, except as such enforceability may be limited by (i) bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or affecting generally the enforcement of creditors' rights and (ii) the availability of equitable remedies (whether in a proceeding in equity or at law), and (b) EPI and its Affiliates have performed all of their obligations under each Assumed Contract, and neither EPI nor any of its Affiliates, nor, to the Knowledge of EPI, any third party to any Assumed Contract, has violated or breached, or declared or committed any Default under, any Assumed Contract. Neither EPI nor any of its Affiliates have received any written notice or, to the Knowledge of EPI, any other communication regarding any actual, alleged, possible or potential violation or breach of, or default under, any Assumed Contract. EPI has delivered to the Acquiror complete and correct copies of all Multi-Product Contracts, including all amendments, exhibits, appendices and annexes thereto; provided, that such copies may have been redacted to prevent disclosure of information not related to any of the Products.

**Section 6.06.      Title to Purchased Assets.** EPI has good and valid title to all of the Purchased Assets and the Product Trademarks and owns all of the Purchased Assets and the Product Trademarks free and clear of any Encumbrances (other than Permitted Encumbrances). At the Closing EPI will convey to the Acquiror good and valid title to all of the Purchased Assets free and clear of any Encumbrances (other than Permitted Encumbrances).

**Section 6.07.      Intellectual Property Rights.**

(a)      EPI has not entered into any Contract (i) granting any Person the right to bring infringement actions with respect to, or otherwise to enforce rights with respect to, any of the Purchased Intellectual Property or the Product Trademarks in the Territory, (ii) expressly agreeing to indemnify any Person against any charge of infringement of any of the Purchased Intellectual Property or the Product Trademarks in the Territory, (iii) granting any Person any license rights or other rights to use or practice any Purchased Intellectual Property or the Product Trademarks in the Territory, or (iv) binding EPI or any of its Affiliates under any covenant not to sue any Person for use, practice or infringement of any Purchased Intellectual Property or the Product Trademarks in the Territory.

(b)      EPI has not entered into any Contract granting any Person the right to control the prosecution of any of the Product Patent Rights in the Territory.

(c)      To the Knowledge of EPI, the conduct of the Business in the Territory, as it has been and is now being conducted, does not presently and will not infringe or misappropriate or otherwise violate, as applicable, any Patent, Know-How, Trademark or other intellectual property or proprietary rights in the Territory of any Person. Neither EPI nor any of its Affiliates has received any written notice from any Person, or has Knowledge of, any claim, allegation or assertion that the conduct of the Business in the Territory infringes or

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

misappropriates or otherwise violates, as applicable, the Patent, Know-How, Trademark or other intellectual property or proprietary rights in the Territory of any Person. To the Knowledge of EPI, the conduct of research, development, exploitation, licensing, distribution, marketing, sale, promotion, importation and use of the Zanaflex Capsules in the Territory by the Acquiror, in each case as such activities are conducted by EPI as of the Closing, will not infringe or misappropriate or otherwise violate, as applicable, any Patent, Know-How, Trademark or other intellectual property or proprietary rights in the Territory of any Person.

(d) Any registration, maintenance and renewal fees due in connection with the Purchased Intellectual Property and the Product Trademarks have been paid in a timely manner and all documents, certificates and other material in connection with the Purchased Intellectual Property and the Product Trademarks have, for the purposes of maintaining such Purchased Intellectual Property or the Product Trademarks, as applicable, been filed in a timely manner with the relevant Governmental or Regulatory Authorities. EPI has filed, prosecuted and maintained the Product Trademarks in the Territory and has filed and maintained all Purchased Intellectual Property, as applicable, in the Territory.

(e) EPI has the unrestricted right to assign, transfer and grant to the Acquiror all rights in and to the Purchased Intellectual Property as provided herein, and in and to the Product trademarks as provided in the Trademark License Agreement, in each case free of any rights or claims of any Person, or any other Encumbrances (other than Permitted Encumbrances), and without payment by any Party of any royalties, license fees or other amounts to any third party.

(f) To the Knowledge of EPI, all of the Product Patents are valid and are subsisting and enforceable. None of the Product Patents has been or is currently involved in any interference, reissue, re-examination or opposition proceeding, and, to the Knowledge of EPI, there is no potentially interfering Patent in the Territory.

(g) To the Knowledge of EPI, (i) there is no unauthorized use, infringement, misappropriation or violation of any of the Purchased Intellectual Property or the Product Trademarks in the Territory by any Person, including any current or former employee or consultant of EPI or its Affiliates, and (ii) there is no material breach of any license, sublicense or other Contract authorizing any Person to use such Purchased Intellectual Property, the Product Trademarks or any goodwill associated therewith.

(h) There are no Actions or Proceedings (including any inventorship challenges) ending with respect to any of the Purchased Intellectual Property or the Product Trademarks, nor are any such Actions or Proceedings brought in the past Schedule 6.07(h) sets forth any and all settlements or agreements reached with respect to any such Actions or Proceedings with respect to Purchased Intellectual Property and the Product Trademarks. None of the Product Trademarks in the Territory is or has been the subject of any invalidation, opposition, cancellation, abandonment or similar proceeding, and neither EPI nor any of its Affiliates has received any written notice from any Person, or has Knowledge, of any actual or threatened claim or basis for such a proceeding.

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

Section 6.08. Litigation. Except as would not have a Material Adverse Effect, there are no Orders, Actions or Proceedings pending or, to the Knowledge of EPI, threatened, against, in connection with or relating to (i) the Purchased Assets or the Business as conducted by EPI, (ii) this Agreement, the Supply Agreement or any Related Agreement or (iii) the transactions contemplated by his Agreement, the Supply Agreement or any Related Agreement. To the Knowledge of EPI; no event has occurred, and no claim, dispute or other condition or circumstance exists that could reasonably be expected to directly or indirectly give rise to or serve as a basis for the commencement of any such Order, Action or Proceeding. EPI has delivered to the Acquiror accurate and complete copies of all pleadings, non-privileged correspondence and other non-privileged written materials that relate to any Orders, Actions or Proceedings identified in Schedule 6.08 of the Man Disclosure Schedule.

Section 6.09. Compliance with Law. (a) Except as would not have a Material Adverse Effect, the Business as conducted by EPI is and has been since December 31, 2002 in compliance with all applicable Laws.

(b) Except as would not have a Material Adverse Effect, since December 31, 2002, no Governmental or Regulatory Authority or any other Person has notified EPI or any of its Affiliates that the conduct of the Business by EPI or the ownership or use of the Purchased Assets were or are in violation of any Law or Order or the subject of any investigation.

Section 6.10. Inventory. All of the Inventory (a) is good, issuable and merchantable in the Ordinary Course of Business of EPI, and is free of any material defect or deficiency, (b) fully conforms to the specifications for the Products as set forth in the Product Registrations, (c) was manufactured, packaged, labelled, held, tested and shipped in accordance with the specifications for the Products as set forth in the Product Registrations, cGMPs, all other applicable Laws and requirements of all applicable Governmental or Regulatory Authorities, (d) is not adulterated or misbranded and is of suitable quality, and (e) may be introduced into interstate commerce in the United States pursuant to the Federal Food, Drug, and Cosmetic Act, as amended.

Section 6.11. Customers and Suppliers. Schedule 6.11 of the Elan Disclosure Schedule specifies for the fiscal year ended December 31, 2003 the names of the customers that were, in the aggregate, the ten (10) largest wholesale customers in terms of dollar value of the Products sold by the Business as conducted by EPI. None of such customers has given EPI notice terminating, canceling or threatening to terminate or cancel any Contract or relationship with EPI relating to the Business as conducted by EPI. Schedule 6.11 of the Elan Disclosure Schedule also specifies for the fiscal year ended December 31, 2003 the names of the suppliers of the active pharmaceutical ingredients in the Products. None of such suppliers has given EPI notice terminating, canceling or threatening to terminate or cancel any Contract or relationship with EPI relating to the Business as conducted by EPI. EPI has disclosed and provided to Acquiror EPI's current returns policy for Products in the Territory.

Section 6.12. Governmental Permits. Schedule 6.12 of the Elan Disclosure Schedule identifies each Governmental Permit that is held by EPI or its Affiliates that relates directly to the Business, the ownership or use of any of the Purchased Assets or EPI's performance of any of the Assumed Contracts, other than Governmental Permits which a failure

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

to hold would not have a Material Adverse Effect. EPI has delivered to the Acquiror accurate and complete copies of all of the Governmental Permits identified on Schedule 6.12 of the Elan Disclosure Schedule, including all renewals thereof and all amendments thereto. To the Knowledge of the EPI, each Governmental Permit identified or required to be identified on Schedule 6.12 of the Elan Disclosure Schedule is valid and in full force and effect. Except as would not have a Material Adverse Effect, EPI and each of its Affiliates is and has at all times since December 31, 2002 been in compliance with all of the terms and requirements of each Governmental Permit identified or required to be identified on Schedule 6.12 of the Elan Disclosure Schedule. Neither EPI nor any of its Affiliates has since December 31, 2002 received any written notice or, to the Knowledge of EPI, any other communication from any Governmental or Regulatory Authority or any other Person regarding (a) any actual, alleged possible or potential violation of or failure to comply with any term or requirement of any material Governmental Permit identified or required to be identified on Schedule 6.12 of the Elan Disclosure Schedule, or (b) any actual, proposed, possible or potential revocation, withdrawal, suspension, cancellation, termination or modification of any Governmental Permit identified or required to be identified on Schedule 6.12 of the Elan Disclosure Schedule, in each case other than any violation, failure to comply, revocation, withdrawal, suspension, cancellation, termination or modification, as applicable, that would not have a Material Adverse Effect. Except as would not have a Material Adverse Effect, all applications required to have been filed for the renewal of the material Governmental Permits required to be identified on Schedule 6.12 of the Elan Disclosure Schedule have been duly filed on a timely basis with the appropriate Governmental or Regulatory Authority, and each other notice or filing required to have been given or made with respect to such Governmental Permits has been duly given or made on a timely basis with the appropriate Governmental or Regulatory Authority.

Section 6.13. Financial Statements. EPI has made available to Acquiror the financial statements attached to the Elan Disclosure Schedule as Exhibit 6.13 thereto, which financial statements have not been audited. Each line item in such financial statements above and including the line item called "Gross Margin" is correct and complete in all material respects for the periods referred in such financial statements, subject to normal audit adjustments, and is in accordance with genetically accepted accounting principles. Each line item in such financial statements below the line item called "Gross Margin" is correct and complete in all material respects for the periods referred to in such financial statements, subject to normal audit adjustments. Acquiror acknowledges and agrees at all financial information contained in such financial statements and relating to the second calendar quarter of 2004 constitutes Confidential Information of EPI.

Section 6.14. No Other Warranties. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH IN THIS AGREEMENT (INCLUDING THE ELAN DISCLOSURE SCHEDULE), EPI DISCLAIMS ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, WITH REGARD TO THE PURCHASED ASSETS AND THE BUSINESS, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS.

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

## **ARTICLE VII**

### **REPRESENTATIONS AND WARRANTIES OF THE ACQUIROR**

The Acquiror represents and warrants to EPI as of the date hereof (except as to certain presentations and warranties which expressly speak as of a different date certain, which shall be accurate and complete as of such date), subject to such exceptions as are disclosed in the disclosure schedule supplied by the Acquiror to EPI and dated as of the date hereof (the “*Acquiror Disclosure Schedule*”), as follows:

Section 7.01. Corporate Organization. The Acquiror is a corporation duly organized, validly existing and in good standing under the laws of Delaware and has all requisite power and authority to own its assets and carry on its business as currently conducted. The Acquiror is duly authorized to conduct its business and is in good standing in each jurisdiction where such qualification is required, except for any jurisdiction where failure to so qualify would not have an Acquiror Adverse Effect.

Section 7.02. Authority of the Acquiror. The Acquiror has all necessary power and authority and has taken all actions necessary to enter into, deliver and perform its obligations under this Agreement, the Supply Agreement and the Related Agreements and carry out the transactions contemplated hereby and thereby. The board of directors and stockholders of the Acquiror have taken all action required by Law and its Charter Documents and otherwise to be taken by it to authorize (a) the execution and delivery of, and performance by it of its obligations under, this Agreement, the Supply Agreement and the Related Agreements and (b) the consummation of the transactions contemplated hereby and thereby. This Agreement has been duly and validly executed and delivered by the Acquiror and, when executed and delivered by EPI, will constitute a legal, valid and binding obligation of the Acquiror, enforceable against it in accordance with its terms, except as such enforceability may be limited by (i) bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or affecting generally the enforcement of creditors’ rights and (ii) the availability of equitable remedies (whether in a proceeding in equity or at law). When executed and delivered by the Acquiror and by EPI, the Supply Agreement and each Related Agreement to which the Acquiror is a party will constitute a legal, valid and binding obligation of the Acquiror, enforceable against it in accordance with its terms, except as such enforceability may be limited by (i) bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or affecting generally the enforcement of creditors’ rights and (ii) the availability of equitable remedies (whether in a proceeding in equity or at law).

Section 7.03. Consents and Approvals. (a) Schedule 7.03(a) of the Acquiror Disclosure Schedule sets forth a complete and accurate list (the “*Acquiror Governmental Consents*”) of all consents, waivers, approvals, Orders, permits or authorizations of, or registrations, declarations, payments or filings by, any Governmental or Regulatory Authority that are required by or with respect the Acquiror in connection with the execution and delivery of this Agreement, the Supply Agreement and the Related Agreements to which it is a party by the Acquiror, the transactions contemplated hereby and thereby or the performance of its obligations hereunder and thereunder, except for those consents, waivers, approvals, Orders, permits,

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

authorizations, registrations, declarations, payments or filings which a failure to obtain or make would not have an Acquiror Adverse Effect.

(b) Schedule 7.03(b) of the Acquiror Disclosure Schedule sets forth a complete and accurate list (the “*Acquiror Third Party Consents*”) of all consents, waivers, approvals, or authorizations of, or notices to, any Person (other than a Governmental or Regulatory Authority) that are required by or with respect to the Acquiror in connection with the execution and delivery of this Agreement, the Supply Agreement and the Related Agreements by the Acquirer, the consummation of the transactions contemplated hereby and thereby or the performance of its obligations hereunder and thereunder, except for those consents, waivers, approvals, authorizations or notices which a failure to obtain or make would not have an Acquiror Adverse Effect.

Section 7.04. Non-Contravention. The execution and delivery by the Acquiror of This Agreement, the Supply Agreement and the Related Agreements to which it is a party, does not, and the performance by it of its obligations under this Agreement, the Supply Agreement and such related Agreements and the consummation of the transactions contemplated hereby and thereby will not:

- (a) conflict with or result in a violation or breach of any of the terms, conditions or provisions of the Charter Documents of the Acquirer;
- (b) assuming the receipt of all Acquiror Governmental Consents, conflict with or result in a violation or breach of any term or provision of any Law applicable to the Acquiror; or
- (c) conflict with or result in a Default under any Contract to which the Acquiror is a party or by which the Acquiror or any of its assets are bound, except as would not have an Acquiror Adverse Effect.

Section 7.05. Litigation. There are no Orders, Actions or Proceedings pending, or the Knowledge of the Acquiror, threatened, against the Acquiror in connection with or relating to (i) this Agreement, the Supply Agreement or any Related Agreement, or (ii) the transactions contemplated by this Agreement, the Supply Agreement or any Related Agreement.

Section 7.06. Financial Capability. As of the date of this Agreement, the Acquiror and its Subsidiaries have at least [\*\*\*] of cash, cash equivalents and marketable securities with maturity of less than one year. Prior to the Closing, the Acquiror shall not permit such assets to fall below [\*\*\*] unless otherwise agreed to in writing by EPI.

Section 7.07. Insurance. The Acquiror and each of its Affiliates that will be involved in the conduct of the Business maintain insurance policies covering their respective assets, business, equipment, properties, operations, employees, officers and directors, including product liability insurance (collectively, the “*Acquiror Insurance Policies*”), which are of the type and amounts customarily carried by Persons conducting businesses similar to those of the Acquiror and its, Affiliates, and each of the Acquiror and its Affiliates, as the case may be, will maintain such Acquiror Insurance Policies for at least three (3) years following the Closing. As

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

of the date of this Agreement, the Acquirer does not know of any threatened termination of, or material premium increase with respect to, any Acquiror Insurance Policies.

Section 7.08. No Other Warranties. EXCEPT FOR THE WARRANTIES EXPRESSLY SET FORTH THIS AGREEMENT (INCLUDING THE ACQUIROR DISCLOSURE SCHEDULE), THE ACQUIROR DISCLAIMS ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, WITH REGARD TO THE SUBJECT MATTER OF THIS AGREEMENT.

## ARTICLE VIII COVENANTS OF THE PARTIES

Section 8.01. [SECTION INTENTIONALLY LEFT BLANK]

Section 8.02. Commercially Reasonable Efforts. Following the date hereof, each of the parties hereto shall use its commercially reasonable efforts to take, or cause to be taken, all action, or to do, or cause to be done, all things necessary, proper or advisable under applicable Laws to consummate and make effective the transactions contemplated by this Agreement, the Supply Agreement to the Related Agreements and to cause the conditions to the obligations of the other party hereto to consummate the transactions contemplated hereby and thereby to be satisfied at the Closing, including obtaining all Elan Third Party Consents, Elan Governmental Consents, Acquirer Governmental Consents and Acquiror Third Party Consents and removing any injunctions or other Encumbrances, other than Permitted Encumbrances, on the Purchased Assets and any impairments or delays the obtaining removal of which are necessary, proper or advisable to the consummation of the transactions contemplated by this Agreement, the Supply Agreement and the Related Agreements.

Section 8.03. Access. (a) In order to facilitate the resolution of any claims made by against or incurred by EPI or any of its Affiliates or any of their respective officers or directors in any Elan Companies Proceeding, upon reasonable notice, the Acquiror shall: (i) afford the officers, employees and authorized agents and representatives of EPI or any of its Affiliates reasonable access (including the right to make copies at their own expense), during normal business hours, to the Product Books and Records; (ii) furnish to the officers, employees and authorized agents and representatives of EPI or any of its Affiliates such additional financial and other information regarding the Business as conducted by EPI relating to the period prior to the Closing as EPI or any of its Affiliates may from time to time reasonably request; (iii) make available to the officers, employees and authorized agents and representatives of EPI or any of its Affiliates the employees of the Acquiror whose assistance, testimony or presence is necessary to assist EPI or any of its Affiliates in evaluating any such claims and/or in prosecuting or defending against such claims, including the presence of such persons as witnesses in hearings or trials for such purposes; and (iv) to the extent that EPI or any of its Affiliates or and of their respective officers or directors is legally required to produce original documents included among the Purchased Assets for inspection in any legal Action or Proceeding, cooperate with EPI or any of its Affiliates or any of their respective officers or directors in making such original documents available for inspection by parties to such Action or Proceeding; *provided, however*, that the foregoing shall not unreasonably interfere with the business or operations of the Acquiror or any

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

of its Affiliates and that all Books and Records to which EPI and its representatives are given such access shall be deemed to be Confidential Information of the Acquiror.

(b) In order to facilitate the resolution of any claims made by or against or incurred by Acquiror or any of its Affiliates or any of their respective officers or directors in any future Action or Proceeding, or the resolution of any written demands relating to alleged Liabilities of Acquiror, EPI shall ensure that EPI, its Affiliates and their respective representatives provide the Acquiror and its representatives with reasonable access during normal business hours to the representatives of EPI and its Affiliates, personnel and assets and to all Books and Records relating to the Business and the Purchased Assets (including the Excluded Books and Records) as the Acquiror may reasonably request; provided that the personnel and operations of EPI, its Affiliates and their respective representatives shall not be unreasonably disrupted by the Acquiror or its Representatives and that all books and Records to which the Acquiror and its representatives are given such access shall be deemed to be Confidential Information of EPI.

(c) Each party agrees to make its respective personnel and those of its Affiliates reasonably available to the other party or its respective representatives to the extent such access is reasonably related to any Excluded Assets, in the case of EPI, or Purchased Assets, in the case of the Acquiror, or is otherwise reasonably necessary to comply with the terms of this Agreement or to comply with any applicable Law, it being understood that the party requesting access shall reimburse the other party promptly for their reasonable and necessary out-of-pocket expenses incurred in complying with my such request.

(d) The Acquiror agrees to maintain all of the Product Books and Records, and EPI agrees to maintain the Excluded Books and Records, for a period of three (3) years after the Closing Date. After such three (3) year period, before either party shall dispose of any such Books and Records, it shall provide to the other party at least ninety (90) calendar days' prior written notice to such effect, and such party shall be given an opportunity, at its sole cost and expense, to remove and retain all or any part of such Product Books and Records (other than the Excluded Books and Records).

Section 8.04. Public Announcements: Confidentiality. (a) [SECTION INTENTIONALLY LEFT BLANK]

(b) Each party shall not, and shall require that its Affiliates and its and their advisors and distributors do not, use or reveal or disclose to third parties any Confidential Information of the other party after the Closing without first obtaining the written consent of the other party, except as may be reasonably necessary in performing such party's obligations or exercising such party's rights under this Agreement (it being understood that any Confidential Information included in the Purchased Assets shall become Confidential Information of the Acquiror following the Closing). Notwithstanding the foregoing, each party may disclose any Confidential Information of the other party to its Affiliates and its and their advisors, accountants, attorneys, consultants and agents on a need-to-know basis only, and such party shall be responsible for such Persons' compliance with the provisions of this paragraph with respect thereto. Each party shall take, and shall require its Affiliates and its and their advisors, accountants, attorneys, consultants and agents to take, reasonable steps to prevent any

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

unauthorized use or disclosure of any Confidential Information of the other party. The foregoing obligations in this Section 8.04(b) shall not apply to, information which (i) is or becomes a matter of public knowledge through no fault of the receiving party or any Person to whom the receiving party provided such information, (ii) the receiving party can demonstrate to have had lawfully in its possession without any obligation of confidentiality prior to disclosure of such information by or on behalf of the disclosing party, (iii) is independently developed by the receiving party without the use of any Confidential Information of the disclosing party as evidenced by written documentation, (iv) is reasonably required to be disclosed in connection with obtaining or maintaining Product Patent Rights or regulatory approvals for the Products, or (v) is required by Law or any Governmental or Regulatory Authority to be disclosed, *provided* that for disclosures under subclauses "(iv)" and "(v)" the disclosing party uses reasonable efforts to give the other party advance written Notice of such required disclosure in sufficient time to enable the other party to seek confidential treatment for such information; and *provided, further*, that such disclosing party limits the disclosure to that information which is required to be disclosed. As used herein, "*Confidential Information*" means all Product Know-How and any proprietary or trade secret information or data relating to the Products or such other information that either party identifies to the other in writing as confidential or the nature of which or the circumstances of the disclosure of which would reasonably indicate that such information is confidential.

(c) The Acquiror acknowledges that it has been informed that information regarding EPI has been requested by the Securities and Exchange Commission and by private litigants in connection with the Elan Companies Proceedings, and waives notice and the opportunity to seek a protective order with respect to the information that has been requested in connection with such Elan Companies Proceedings.

(d) Notwithstanding the confidentiality covenants contained herein, the disclosure of any information governed by the confidentiality covenants contained in this Section 8.04 may be made by EPI or any of its Affiliates without liability hereunder to any of their Affiliates and to any employee, agent, attorney, accountant, consultant or representative who is assisting EPI in prosecuting or defending against any Elan Companies Proceeding.

(e) Notwithstanding the confidentiality covenants contained herein, EPI and any of its Affiliates shall be permitted to use any Confidential Information that EPI or any of its Affiliates in good faith believes to be necessary for purposes of prosecuting or defending an Elan Companies Proceeding, *provided, however*, that EPI or any of its Affiliates will use its best efforts to obtain an order protecting the confidentiality of such information.

(f) Following the Closing, the confidentiality agreement dated as of April 14, 2004 between EPI and the Acquiror (the "*Confidentiality Agreement*") will terminate in its entirety with no further obligation on the part of any party thereto, except for paragraphs 1.2, 1.4, 4, 7, 8, 9 and 12 thereof. In addition, the transactions contemplated by this Agreement, the Supply Agreement and the Related Agreements shall not constitute a breach or violation of the terms of the Confidentiality Agreement.

Section 8.05. Returns, Rebates and Chargebacks. (a) (i) Prior to the Returns Termination Date, EPI will, at its sole cost and expense, process and issue credits (or render

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

payment in such other form as EPI may determine) for all returned Products. EPI will not bill the Acquiror for the processing of claims for returned Products. Such handling of returned Products by EPI, and the issuance of any credits or other form of reimbursement in connection therewith, shall be in accordance with EPI's current returned goods policy. Subject to Section 8.05(iii), as of the Returns Termination Date, the Acquiror will, at its sole cost and expense, process and issue credits (or render payment in such other form as the Acquiror may determine) for all returned Products. The Acquiror will not bill EPI for the processing of claims for returned Products. Such handling of returned Products by the Acquiror, and the issuance of any credits of other form of reimbursement in connection therewith, shall be in accordance with the Acquiror's current returned goods policy.

(ii) EPI and the Acquirer will use reasonable efforts in requesting that customers direct an Product returns prior to the Returns Termination Date to EPI, and after the Returns Termination Date to the Acquiror. All returned Products received by the Acquiror or EPI after the Closing Date will be destroyed by such party at its respective returns handling facility. After such destruction, each party will forward to the other party any necessary accompanying documentation to determine he appropriate credit. If the Acquiror or EPI destroys Products for which the other was financially responsible as set forth in Section 8.05(a)(iii) and (iv), that party shall bill the other party for the cost of the destruction. Each such invoice shall set forth the number of units processed, together with such other information as shall be necessary to support the invoice. Each party shall, within thirty (30) days of its receipt of invoice, pay the other party for the full invoiced amount.

(iii) The parties hereto agree and acknowledge that EPI shall be financially responsible only for returned Products bearing NDC numbers of EPI or any of its Affiliates, evidenced is being sold by EPI (or its Affiliates, sublicensees and marketing, promotion or distribution partners) prior to the Closing and evidenced as being received at either party's returns handling facility on or before the Returns Termination Date. For purposes of this Section 8.05(a)(iii), the dollar value of returned Products paid or credited for by EPI shall be determined in accordance EPI's then current returned goods policy.

(iv) The parties hereto agree and acknowledge that the Acquiror shall be financially responsible for returned Product bearing the Acquiror's NDC number, evidenced as being sold after the Closing or evidenced as being received at either party's returns handling facility after the Returns Termination Date. For purposes of this Section 8.05(a)(iv), the dollar value of returned Products paid or credited for by the Acquiror shall be determined in accordance with the Acquiror's then current returned goods policy.

(b) (i) EPI shall be financially responsible for all rebates pursuant to any government rebate programs with respect to government claims far the Products indicating NDC numbers EPI or any of its Affiliates and dispensed prior to the Rebates and Chargebacks Termination Date. Any such rebates for Products dispensed subsequent to the Rebates and Chargebacks Termination Date will be the liability of the Acquiror. The Acquiror shall reimburse EPI for all rebates that EPI is obligated to pay with respect to government claims for the Products dispensed after such date (it being understood and agreed that the dispense date contained in any report from a state rebate program shall be used for purposes of determining such date). All payments due EPI under this Section 8.05(b) shall be made within thirty (30) days

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

of submission to the Acquiror of invoices that describe the requested payments in reasonable detail.

(ii) The Acquiror acknowledges that EPI will require certain information from the Acquiror in order to calculate the Medicaid rebate for Products bearing NDC numbers of EPI or any of its Affiliates. Accordingly, the Acquiror agrees that, from and after the Closing Date until the date which is one year after the expiration date of the last lot of Products produced with any NDC number of EPI or any of its Affiliates, the Acquiror will provide to EPI, within five (5) days following the delivery of related information to the Centers for Medicare and Medicaid Services (or any successor agency), the following information: (a) the “best price” (as defined under the Social Security Act, 42 U.S.C. § 1396r-8(c)(1)(C)) for each Product identified by NDC number, (b) the “average manufacturer price” (as defined under the Social Security Act, 42 U.S.C. § 1396r-8(k)(1)) for each Product identified by the NDC number, and (c) any additional data or other information related to such Medicaid issues reasonably requested by EPI. EPI will provide the same information to Acquiror on the same basis with respect to Products sold by EPI prior to the Closing to the extent that such information is not included in the Product Books and Records.

(c) EPI shall be responsible for all commercial rebates with respect to the Products dispensed prior to the Rebates and Chargebacks Termination Date. Notwithstanding the foregoing, the Acquiror and EPI agree that (a) EPI’s financial liability for the commercial rebates prior to such date shall be limited to those commercial customers with which EPI has a rebate obligation as of the Closing and (b) any such payments by EPI shall be made on the terms and conditions comparable to EPI’s rebate obligations as of the Closing with respect to each such commercial customer and shall be based on the terms of EPI’s agreement with such customer as of the Closing. Any rebates for Products dispensed subsequent to the Rebates and Chargebacks Termination Date will be the liability of the Acquiror. To the extent that EPI processes such claims, the Acquiror shall reimburse EPI within thirty (30) days of receipt of (i) invoices that describe the requested payments in reasonable detail together with copies of the original underlying invoices submitted to EPI

(d) EPI shall be financially responsible for all chargeback claims and related Administrative Fees for the Products with a chargeback invoice dated (*i.e.*, the date of sale from the wholesaler to the wholesaler customer, subsequently referred to as the “*Activity Date*”) prior to the Chargebacks Termination Date. The Acquiror shall process and be financially liable for all chargeback claims and related Administrative Fees with an Activity Date subsequent to such date. Notwithstanding the foregoing, the parties acknowledge that the VA National Acquisition Center must approve the removal of the Products from EPFs Federal Supply Schedule (“FSS”) before the responsibility of processing such chargebacks is transferred from EPI to the Acquirer. Accordingly, in the event such approval is not obtained prior to the Closing Date, EPI shall continue to be responsible for processing the FSS chargebacks and related Administrative Fees on the Acquirer’s behalf, and the Acquiror shall reimburse EPI for same within thirty (30) days of receipt of invoices that describe the requested payments in reasonable detail together with copies of the original underlying invoices submitted to EPI. The Acquiror and EPI agree that (a) EPI’s financial liability for such transition chargebacks and related Administrative Fees shall be limited to those commercial customers with which EPI has chargeback obligations as of the Closing, and (b) any such chargebacks and related Administrative Fees issued by EPI shall be

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

made on the terms and conditions comparable to EPI's chargeback obligations as of the Closing with respect to each such commercial customer and shall be based on the terms of EPI's agreement with such customer as of the Closing.

(e) Notwithstanding the requirements of Section 8.05(b), the Acquiror and EPI agree that EPI's financial liability for governmental rebates shall terminate on the date that is one hundred eighty (180) days after the Closing Date, except with respect to governmental rebates relating to utilization data submitted to EPI prior to the Rebates add Chargebacks Termination Date (for which EPI's responsibility and financial liability shall not terminate). Notwithstanding the requirements of Section 8.05(c) or (d), the Acquiror and EPI agree that EPI's financial liability for commercial rebates and chargeback claims and related Administrative Fees shall terminate on the date that is one hundred twenty (120) days after the Closing Date.

(f) The Acquiror agrees that it shall not increase the wholesale acquisition cost of the Products prior to the date that is one hundred eighty (180) days after the Closing Date.

(g) EPI shall promptly provide the Acquiror with all information required to permit the Acquiror to comply with its obligations to sell the Products under the Public Health Services Act after the Closing (*i.e.*, the AMP and Rebates Per Unit ("RPU") for the Products for the two full calendar quarters, and any partial calendar quarter, immediately preceding the Closing Date). The parties promptly after Closing shall make all filings with Health Resources Services Administration and the Veteran's Administration necessary to transfer the obligation to sell Products under the Public Health Services Act after the Closing from EPI to the Acquiror.

Section 8.06. Multi-Product Contracts. Schedule 8.06 of the Elan Disclosure Schedule sets forth a complete and correct list of each Contract to which EPI is a party and pursuant to which EPI sells any of the Products, together with other pharmaceutical products of EPI or its Affiliates, to a third party (the "*Multi Product Contracts*"). Except as specified in Schedule 8.06 of the Elan Disclosure Schedule, within ten (10) Business Days following the Closing, EPI shall (a) take all actions necessary to terminate such Multi-Product Contracts to the extent that they pertain to the Products in the shortest period of time permitted thereunder, and (b) inform the other parties to such Multi-Product Contracts of the acquisition of the Purchased Assets by the Acquiror and notify them that they must submit all utilization within the timeframe required by such Contract in order to be paid thereunder. From and after the sixth day following the Closing, the Acquiror may contact any Person who is a party to a Multi-Product Contract for the purposes of (i) negotiating an agreement relating to the Products with such Person, and (ii) informing such Person of the acquisition of the Purchased Assets by the Acquiror and notifying them that any utilization must be submitted within the timeframe required by the relevant Multi-Product Contract.

Section 8.07. Bulk Transfer Laws. The Acquiror and EPI hereby waive compliance with the provisions of any so-called "bulk transfer law" of any jurisdiction in connection with the sale of the Purchased Assets to the Acquiror.

Section 8.08. Further Assurances. (a) On and after the Closing Date, EPI shall, from time to time, at the request of the Acquiror, execute and deliver, or cause to be executed

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

and delivered, such other instruments of conveyance and transfer and take such other actions as the Acquiror may reasonably request, in order to (i) more effectively consummate the transactions contemplated hereby, in the Supply Agreement and in the Related Agreements and to vest in the Acquirer good and marketable title to the Purchased Assets (including assistance in the collection or reduction to possession of any of the Purchased Assets), and (ii) transfer to the Acquiror those assets that are necessary for the conduct of the Business that were not included in the Purchased Assets.

(b) On and after the Closing Date, the Acquiror shall, from time to time, at the request of EPI, take such actions as EPI may reasonably request, in order to more effectively consummate the transactions contemplated hereby, in the Supply Agreement and in the Related Agreements, including the Acquiror's assumption of the Assumed Liabilities.

Section 8.09 Corporate Names. (a) The Acquirer shall be entitled to continue to use the Corporate Names and the NDC number of EPI or its Affiliates for the Products on the existing Labeling and packaging for the Products until such time as the Acquiror has prepared and filed with the appropriate Governmental or Regulatory Authorities, and such authorities approve, if required, new Labeling that does not contain references to the Corporate Names or such NDC numbers; *provided however*, that, if the Acquiror does not prepare within ninety (90) days of the Closing Date final specifications for such revised Labeling and packaging of the Products, including new NDC numbers for the Products and all necessary photo-ready art (or its substantial equivalent) reflecting such modifications, the right of the Acquiror described in this sentence shall terminate ninety (90) days after the Closing Date. Notwithstanding the foregoing, the Acquiror shall be entitled to continue to use the Corporate Names that consist of trademarks of EPI or its Affiliates debossed or otherwise included on Zanaflex Tablets as of the Closing on Zanaflex Tablets until the date that is one hundred eighty (180) days after the Closing Date. Subject to the terms and conditions herein, EPI hereby grants a non-exclusive, non-transferable license to the Acquiror and its Subsidiaries to use the Corporate Names on the Labeling and packaging of the Products and on Zanaflex Tablets themselves, in each case to the extent specified herein.

(b) "*Corporate Names*" means the trademark and service mark "ELAN", the Corporate logos and trade names of EPI and its Affiliates, including the word "ELAN" together with any variations and derivatives thereof and any other logos, symbols or trademarks, trade names or service marks of EPI and its Affiliates (including for the avoidance of doubt any trademarks of EPI or its Affiliates debossed or otherwise included on Zanaflex Tablets themselves), but excluding the Product Trademarks.

(e) EPI and/or its Affiliates, as applicable, retain and shall retain all right, title and interest in and to the Corporate Names. The Acquiror expressly acknowledges that EPI and/or its Affiliates own the Corporate Names, and agrees that it will not attack, dispute or contest the validity of or ownership of the Corporate Names, or any registrations issued or issuing with respect thereto. The Acquirer further agrees that all use of the Corporate Names by the Acquiror or its Affiliates shall be for the benefit of EPI and/or its Affiliates and the goodwill accrued in connection with its use of the Corporate Names shall accrue to EPI and/or its Affiliates. In the event the Acquirer acquires any rights relating to the Corporate Names for any reason, the Acquiror agrees to assign, at no cost, all such rights, together with any related

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

goodwill, to EPI. The Acquiror shall use best efforts not to do any act which endangers, destroys or similarly affects the value of the goodwill pertaining to the Corporate Names and further agrees that it will ensure that all Products comply with the quality standards and specifications of Elan in existence as of the Closing Date and at all times with at least the same standards as Elan employs for its other products taking into account the nature of the Products and the quality of their manufacture and distribution, including but not limited to the applicable laws, rules or regulations of any Governmental or Regulatory Authority having jurisdiction over the manufacture and distribution of the Products. Except as provided in this Section 8.09, the Acquiror farther agrees that it will not alter, change, deface or obliterate the Corporate Names on Labeling for the Product. The Acquirer will at anytime execute any documents reasonably required by EPI to confirm all ownership interests of EPI and/or its Affiliates in the Corporate Names. The Acquirer shall not use in connection with the Product, or allow any of its Affiliates to use in connection with the Product, any other trademark or trade name which is similar to or substantially similar, to or so nearly resembles the Corporate Names as to be likely to cause deception or confusion.

**Section 8.10. Protective Covenant.** (a) During the period beginning at the Closing and ending on the third (3<sup>rd</sup>) anniversary of the Closing Date, the Acquiror shall not, directly or indirectly, market, distribute or sell in the United Kingdom or Ireland any pharmaceutical product containing tizanidine or any chiral isomer of tizanidine as its active pharmaceutical ingredient.

(b) During the period beginning at the Closing and ending on the later of (i) the date that the Supply Agreement (or any superceding agreement between the parties with respect to the supply of Zanaflex Capsules by EPI to the Acquiror) is validly terminated, or (ii) the date the EPI Royalty Term ends, EPI shall not, directly or indirectly, market, distribute or sell in the Territory any pharmaceutical product containing tizanidine or any chiral isomer of tizanidine as its active pharmaceutical ingredient.

**Section 8.11. Commercialization of Zanaflex Capsules.** Subject to EPI's and its Affiliate's continuing performance of their obligations under this Agreement, the Supply Agreement and the Related Agreements, the Acquiror hereby covenants and agrees that it will use commercially reasonable efforts after the Closing Date to commercialize Zanaflex Capsules.

**Section 8.12. Zanaflex Tablet Business.** From and after the Closing during calendar year 2004, the Acquiror will conduct the Business relating to Zanaflex Tablets using the same commercially reasonable efforts that would be used by a pharmaceutical company similarly situated, including but not limited to filling orders as they are received for Zanaflex Tablets.

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

**ARTICLE IX**  
**[ARTICLE INTENTIONALLY LEFT BLANK]**

**ARTICLE X**  
**[ARTICLE INTENTIONALLY LEFT BLANK]**

**ARTICLE XI**  
**INDEMNIFICATION**

Section 11.01. Survival of Representations, Warranties, Covenants, Etc. (a) The representations and warranties and covenants and agreements to be performed at the Closing of EPI or the Acquiror contained in this Agreement shall survive the Closing and terminate 12 months following the Closing Date (the “*Expiration Date*”). Notwithstanding the preceding sentence, so long as an Indemnified Party gives an Indemnification Claim Notice for any claim for indemnification on or before the Expiration Date, such Indemnified Party shall be entitled to pursue its rights to indemnification for such claim.

(b) The representations, Warranties, covenants and agreements of EPI and the Acquiror, and the rights and remedies that may be exercised by the Acquiror Indemnitees and the EPI indemnitees, shall not be limited or otherwise affected by or as a result of any information furnished to, or any investigation made by or any knowledge of, any of the Acquiror Indemnitees or EPI Indemnitees or m y of their respective Representatives.

(c) For purposes of this Agreement, each statement or other item of information set forth in the Elan Disclosure Schedule shall be deemed to be a representation and warranty made by EPI in this Agreement; and each statement or other item of information set forth in the Acquiror Disclosure Schedule shall be deemed to be a representation and warranty made by the Acquiror in this agreement.

(d) Nothing contained in this Section 11.01 or elsewhere in this Agreement shall limit any rights or remedy of any indemnified party for claims based on fraudulent or intentional misrepresentation.

Section 11.02. Indemnification.

(a) By EPI. Subject to Sections 11.01 and 11.03, from and after the Closing, EPI shall indemnify, reimburse, compensate, defend and hold harmless the Acquiror, its Affiliates and their respective officers, directors, employees, agents, successors and assigns (the “*Acquiror Indemnitees*”) from and against any and all costs, losses, damages, including natural resource damages, fines, penalties, judgments, lawsuits, deficiencies, claims and expenses (including reasonable fees and disbursements of attorneys and other professionals, including third-party consultants and, to the extent allowable at Law, medical monitoring costs and expenses) of every kind and nature (collectively, “*Damages*”) incurred in connection with, arising out of, resulting from or incident to (regardless of whether or not such Damages relate to any third-party claim): (i) any inaccuracy in or breach of a representation or warranty of EPI made in this Agreement or any Related Agreement, (ii) any inaccuracy in or breach of a representation or warranty of EPI made in this Agreement or any Related Agreement as of the Closing Date as if made on the Closing Date (or, in the case of each representation and warranty

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

which expressly speaks as of an earlier date, as of the earlier date as of which such representation and warranty speaks), (iii) any breach of any covenant or agreement of EPI in this Agreement or any Related Agreement, (iv) any Excluded Liabilities and (v) any Action or Proceeding relating directly or indirectly to any inaccuracy, breach, alleged inaccuracy or breach, Liability or matter of the type referred to in clauses "(i)," "(ii)," "(iii)," or "(iv)" above (including any Action or Proceeding commenced by any Acquiror Indemnitee for the purpose of enforcing any of its rights under this Article XI).

(b) By the Acquiror. Subject to Sections 11.01 and 11.03, from and after the Closing, the Acquiror shall indemnify, reimburse, compensate, defend and hold harmless EPI, its Affiliates and their respective officers, directors, employees, agents, successors and assigns (the "EPI Indemnitees") from and against any and all Damages incurred in connection with, arising out of, resulting from or incident to (regardless of whether or not such Damages relate to any third-party claim): (i) any inaccuracy in or breach of a representation or warranty of the Acquiror made in this Agreement or any Related Agreement, (ii) any inaccuracy in or breach of a representation or warranty of the Acquiror made in this Agreement or any Related Agreement as of the Closing Date as if made on the Closing Date (or, in the case of each representation and warranty which expressly speaks as of an earlier date, as of the earlier date as of which such representation and warranty speaks), (iii) any breach of any covenant or agreement of the Acquiror in this Agreement or any Related Agreement, (iv) any Assured Liabilities and (v) any Action or Proceeding relating directly or indirectly to any inaccuracy, breach, alleged inaccuracy or breach, liability or matter of the type referred to in clauses "(i)," "(ii)," "(iii)," or "(iv)" above (including any Action or Proceeding commenced by any EPI Indemnitee for the purpose of enforcing any of its rights under this Article XI).

(c) Procedure for Claims. If any indemnified party has or claims to have incurred or suffered Damages for which it is or may be entitled to indemnification, compensation or reimbursement under this Article XI, and the indemnified party wishes to make a claim for the recovery of such Damages from an indemnifying party, such indemnified party shall deliver a Notice (an "*Indemnification Claim Notice*") to the indemnifying party. Each Indemnification Claim Notice shall (i) state that such indemnified party believes that there is or has been a breach of a representation, warranty or covenant contained in the Agreement or that such indemnified party is otherwise entitled to indemnification, compensation or reimbursement under this Article XI, (ii) contain a brief description of the circumstances supporting such indemnified party's belief that there is or has been such a possible breach or that such indemnified party is so entitled to indemnification, compensation or reimbursement, and (iii) if practicable contain a good faith, non-binding, preliminary estimate of the aggregate dollar amount of actual and potential damages that have, arisen and may arise as a result of such breach or other matter as set forth in such Indemnification Claim Notice. For the avoidance of doubt, the parties agree that if an indemnified party is entitled to make an indemnification claim under more than one clause of either Section 11.02(a) or 11.02(b), as applicable, the indemnified party may make such claim under any or all of the applicable provisions.

(d) Third Party Claims. The obligations of an indemnifying party under this Section 11.02 with respect to Damages arising from claims or legal proceedings of any third party that are subject to indemnification as provided for in Section 11.02(a) or Section 11.02(b)

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

(a “*Third Party Claim*”) shall be governed by and be contingent upon the following additional terms and conditions:

(i) If (A) the indemnified party receives written notice of the commencement of any Third Party Claim against any indemnified party, and (B) a claim for indemnification is to be made against the indemnifying party under this Agreement with respect to such Third Party Claim, then the indemnified party shall promptly notify the indemnifying party of the commencement of such Third Party Claim; *provided, however*, that any failure to notify the indemnifying party of the commencement of such Third Party Claim shall not limit or otherwise affect any rights of the indemnified party or any liability that the indemnifying party may have to any indemnified party (except to the extent that the defense of such Third Party Claim has been materially prejudiced by the indemnified party’s failure to notify the indemnifying party of the commencement of such Third Party Claim). If, within thirty (30) days after receiving notification of the commencement of any Third Party Claim, the indemnifying party delivers to the indemnified party a written notice setting forth the election of the indemnifying party to assume the defense of such Third Party Claim, then, subject to subsections “(ii)” and “(iii)” below:

- (A) the indemnifying party shall be entitled to assume the defense of such Third Party Claim, at the sole expense of the indemnifying party, with counsel reasonably satisfactory to the indemnified party; and
  - (B) as long as the indemnifying party conducts such defense, the indemnifying party shall not be required to reimburse the indemnified party for any fees paid to any other counsel representing such indemnified party in such Third Party Claim for legal services rendered while the indemnifying party is conducting such defense (it being understood that the indemnifying party shall be required to reimburse the indemnified party for any fees paid to counsel representing the indemnified party in such Third Party Claim for legal services rendered prior to the time the indemnified party receives notice of the election of the indemnifying party to assume such defense).
- (ii) If the indemnifying party assumes the defense of a Third Party Claim in accordance with subsection ”(i)” above,  
then:
- (A) it will be deemed conclusively established for purposes of this Agreement that such Third Party Claim is within the scope of and are subject to the indemnification provisions set forth in Section 11.02, and the indemnifying party shall not be permitted to contest the applicability of Section 11.02 to such Third Party Claim or to contest the indemnifying party’s obligation to provide indemnification to the indemnified party with respect thereto;
  - (B) the indemnified party shall promptly deliver to the indemnifying party all original notices and documents (including court papers) received by any indemnified party in connection with the Third Party Claim.

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

- (C) the indemnifying party shall keep the indemnified party informed of all material developments relating to such Third Party Claim;
- (D) the indemnified party shall be entitled to participate (at its own expense) in the defense of such Third Party Claim; and
- (E) the indemnifying party shall not be permitted to effect any settlement, adjustment or compromise of such Third Party Claim or any of the claims made in connection therewith without the prior written consent of the indemnified party (which consent shall not be unreasonably withheld or delayed) unless (I) such settlement, adjustment or compromise involves no finding or admission of any breach by any indemnified party of any obligation to any other Person or any violation by any indemnified party of any Law, (II) such settlement, adjustment or compromise has no effect on any other claim that may be made against any indemnified party, (III) the sole relief provided in connection with such settlement, adjustment or compromise is monetary damages that are paid in full by the indemnifying party, and (IV) the indemnified party receives a full release with respect to such claim.

If the indemnifying party does not elect (within the 30-day lime period specified in subsection "(i)" above) to assume the defense of a Third Party Claim in accordance with subsection "(i)" above, then (I) the indemnified party shall have the exclusive right, at its election, to control the defense of such Third Party Claim with counsel selected by the indemnified party and reasonably satisfactory to the indemnifying party, (II) provided that the indemnifying party is adjudged to be obligated to indemnify the indemnified party hereunder, the indemnifying party shall not be entitled to challenge the manner in which the Third Party Claim was litigated by the indemnified party and its counsel or the judgment or other outcome of the Third Party Claim, and (iii) the indemnifying party will not be bound by any settlement, adjustment or compromise effected by the indemnified party with respect to such Third Party Claim or of any of the claims made in connection therewith that is effected without the prior written consent of the indemnifying party (which consent shall not be unreasonably withheld or delayed).

(iii) Notwithstanding anything to the contrary contained in this Section 11.02(d), and notwithstanding any election made by the indemnifying party to assume the defense of any Third Party Claim in accordance with subsection "(i)" above, if any indemnifying party or any affiliate of any indemnifying party is also a party to such Third Party Claim, and counsel to the indemnified party determines in good faith that joint representation would give rise to a conflict of interest in such Third Party Claim, then the indemnified party may retain its own legal counsel at the expense of the indemnifying party, and the indemnifying party and its counsel shall cooperate with the Indemnified Party and its counsel as may be reasonably requested.

(iv) Regardless of whether the indemnifying party or the indemnified party defends or prosecutes any Third Party Claim, each non-defending party shall, and shall cause each Affiliate of any such non-defending party to, cooperate in the defense or prosecution thereof and shall furnish such records, information and testimony, provide such witnesses and

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

attend such conferences, discovery proceedings, hearings, trials and appeals as maybe reasonably requested in connection therewith. Such cooperation shall include access during normal business hours afforded to the defending party to, and reasonable retention by each non-defending party of, records and information that are reasonably relevant to such Third Party Claim, and making each non-defending party and other employees and agents thereof available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder, and the indemnifying party shall reimburse each such Person for all its reasonable out-of-pocket expenses in connection therewith.

Section 11.03. Limitations.

(a) With the exception of claims based upon fraudulent misrepresentation, in no event shall an indemnifying party be liable for any Damages pursuant to a claim based upon a representation, warranty or covenant pursuant to (i) Sections 11.02(a)(i), 11.02(a)(ii) or 11.02(a)(iii) (other than claims for breach of the covenant set forth in Section 8.10(b)) or (ii) Sections 11.02(b)(i), 11.02(b)(ii) or 11.02(b)(iii) (other than claims for breach of the covenant set forth in Section 8.10(a)), as applicable (each of the claims set forth in clauses "(i)" and "(ii)" above is referred to as an "*Eligible Claim*"), unless and until the aggregate amount of all such Damages for all Eligible Claims payable by such indemnifying party exceeds [\*\*\*] in which case the indemnifying party shall be liable for all such Damages, and not only those Damages in excess of such amount. With the exception of claims based upon fraudulent misrepresentation or claims for breach of the covenants set forth in Sections 8.10(a) or 8.10(b), the maximum aggregate amount payable by an indemnifying party pursuant to all Eligible Claims payable by such indemnifying party shall in no event exceed [\*\*\*]. Further, with the exception of claims based upon fraudulent misrepresentation, each party hereto agrees that the indemnification rights provided by Section 11.02 are the sole and exclusive remedy for monetary damages for claims by such party or any Acquiror Indemnitee or EPI Indemnitee for breach by the other party of any representation, warranty or covenant contained in this Agreement.

(c) Any indemnifying party shall also be liable to the indemnified party for interest on the amount of any Damages that such indemnified party is entitled to recover from the indemnifying party (for the period commencing as of the date on which the indemnified party delivered the applicable Notice of Indemnification Claim to the indemnifying party and ending on the date on which the liability of such indemnifying party to such indemnified party is fully satisfied by such indemnifying party) at a floating rate equal to the prime rate publicly announced by Morgan Guaranty Trust Company of New York at its principal office from time to time plus [\*\*\*] (or, if less, the maximum rate allowed to be charged under applicable laws), such interest to be compounded monthly.

(d) In the event of a dispute regarding the amount of Damages recoverable in connection with an indemnification claim, the indemnifying party and the indemnified party may bring evidence regarding the quantification of such Damages, including evidence relating to insurance proceeds recovered by the indemnified party in connection with the events underlying such indemnification claim and any related increases in insurance premiums payable by the indemnified party, and the amount of any tax benefit gained or any tax increase or disadvantage suffered in connection with such indemnification claim.

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

(e) THE INDEMNIFICATION OBLIGATIONS OF THE PARTIES HERETO SHALL NOT EXTEND TO SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING BUSINESS INTERRUPTION OR LOST PROFITS, OR PUNITIVE DAMAGES, UNLESS SUCH DAMAGES ARE AWARDED IN CONNECTION WITH, OR INCLUDED IN A SETTLEMENT, ADJUSTMENT OR COMPROMISE OF, A THIRD PARTY CLAIM.

**ARTICLE XII**  
**[ARTICLE INTENTIONALLY LEFT BLANK]**

**ARTICLE XIII**  
**MISCELLANEOUS**

Section 13.01. Notices. All Notices, requests and other communications hereunder must be in writing and will be deemed to have been duly given (a) if delivered personally, upon receipt, (b) if delivered by facsimile transmission, upon receipt by the sender of the answer back confirmation, (c) if mailed, postage prepaid by certified or registered mail, return receipt requested, upon receipt, or (d) if delivered by nationally recognized overnight courier that maintains records of delivery, upon receipt (in each case regardless of whether such Notice, request or other communication is received by any other Person to whom a copy of such Notice, request or other communication is to be delivered pursuant to this Section 13.01), in each case to the parties at the following addresses or facsimile numbers:

If to the Acquiror to:

Acorda Therapeutics  
15 Skyline Drive  
Hawthorne, NY 10532  
Facsimile: (914) 347-4560  
Attention: General Counsel

If to EPI to:

Elan Pharmaceuticals, Inc.  
800 Gateway Boulevard  
South San Francisco, CA 94080  
Facsimile: (650) 553-7165  
Attention: Vice President, Legal Affairs.

Either party from time to time may change its address, facsimile number or other information for the purpose of Notices to that party by giving Notice specifying such change to the other party hereto in accordance with the terms of this Section 13.01.

Section 13.02. Entire Agreement. This Agreement (and all Exhibits and Schedules attached hereto and all other documents delivered in connection herewith) supersedes all prior discussions and agreements among the parties with respect to the subject matter hereof

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

and contains the sole and entire agreement among the parties hereto with respect to the subject matter hereof (except as otherwise set forth in Section 8.04(f)).

Section 13.03. Waiver. Any term or condition of this Agreement may be waived at any time by the party that is entitled to the benefit thereof, but no such waiver shall be effective unless set forth in a written instrument duly executed by or on behalf of the party waiving such term or condition. No waiver by any party hereto of any term or condition of this Agreement, in any one or more instances, shall be deemed to be or construed as a waiver of the same or any other term or condition of this Agreement on any future occasion. All remedies, either under this Agreement or by law or otherwise afforded, will be cumulative and not in the alternative.

Section 13.04. Amendment. This Agreement may be amended, supplemented or codified only by a written instrument duly executed by each party hereto.

Section 13.05. Third Party Beneficiaries. The terms and provisions of this Agreement are intended solely for the benefit of each party hereto and their respective successors or permitted assigns and it is not the intention of the parties to confer third party beneficiary rights upon any other Person, except as achieved through the indemnification clause set forth in Section 11.02.

Section 13.06 Assignment: Binding Effect. Neither this Agreement nor any right, interest or obligation hereunder may be assigned by any party hereto without the prior written consent of the other party hereto and any attempt to do so will be void, except that an Indemnified Party under article XI may assign any of its rights, benefits or obligations hereunder, by operation of law or otherwise, (a) to any of its Affiliates, *provided* such Indemnified Party continues to be responsible for all of its obligations hereunder, (b) to a Person that (i) purchases all or substantially all of the assets being conveyed hereunder or (ii), merges with the Acquiror or the Indemnified Party or (c) to the lenders of the Acquiror and its successors or assigns; *provided, however*, such assignment does not create adverse consequences for the indemnifying party. This Agreement is binding upon, inures to the benefit of and is enforceable by the parties hereto and their respective successors and permitted assigns.

Section 13.07. Headings. The headings used in this Agreement have been inserted for convenience of reference only and do not define or limit the provisions hereof.

Section 13.08. Elan Patenting. Subject to Section 2.02, nothing in this Agreement shall be deemed to prevent or prohibit EPI or its Affiliates from filing, maintaining, licensing, prosecuting or enforcing any rights arising out of intellectual property purchased or licensed after the Closing or relating to inventions reduced to practice after the Closing.

Section 13.09. Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under any present or future law, and if the rights or obligations of any party hereto under this Agreement will not be materially and adversely affected thereby, (i) such provision will be fully severable, (ii) this Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof, (iii) the remaining provisions of this Agreement will remain in full force and effect and will not be

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

affected by the illegal, invalid or unenforceable provision or by its severance herefrom, and (iv) in lieu of such illegal, invalid or unenforceable provision, there will be added automatically as a part of this Agreement a legal, valid and unenforceable provision as similar to the terms of such illegal, invalid or unenforceable provision as may be possible and reasonably acceptable to the parties herein.

Section 13.10. Governing Law; Jurisdiction. THIS AGREEMENT AND THE RELATED AGREEMENTS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS EXECUTED AND PERFORMED IN SUCH STATE, WITHOUT GIVING EFFECT TO CONFLICTS OF LAWS PRINCIPLES. EACH PARTY HERETO HEREBY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE FEDERAL AND NEW YORK STATE COURTS LOCATED IN THE CITY OF NEW YORK IN CONNECTION WITH ANY DISPUTE RELATED TO THIS AGREEMENT OR ANY RELATED AGREEMENT OR ANY MATTERS CONTEMPLATED HEREBY OR THEREBY. SERVICE OF ANY PROCESS, SUMMONS, NOTICE OR DOCUMENT BY REGISTERED MAIL ADDRESSED TO ANY PARTY HERETO AT THE ADDRESS SET FORTH FOR SUCH PARTY HEREIN SHALL BE EFFECTIVE SERVICE OF PROCESS AGAINST SUCH PARTY FOR ANY SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT. EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY OBJECTION TO THE LAYING OF VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT AND ANY CLAIM THAT ANY SUCH ACTION OR PROCEEDING HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. A FINAL JUDGMENT IN ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT MAY BE ENFORCED IN ANY OTHER COURTS TO WHOSE JURISDICTION SUCH PARTY IS OR MAY BE SUBJECT, BY SUIT UPON JUDGMENT

Section 13.11 Expenses. Except as otherwise provided in this Agreement, the Supply Agreement or the Related Agreements, each party hereto shall pay its own expenses and costs incidental to the preparation of this Agreement, the Supply Agreement and the Related Agreements and to the consummation of the transactions contemplated hereby and thereby.

Section 13.12 Counterparts. This Agreement may be executed in any number of counterparts and by facsimile, each of which will be deemed an original, but all of which together will constitute one and the same instrument. A facsimile copy shall be a sufficient proof of signature, without it being necessary to produce the original copy.

[SIGNATURES ON FOLLOWING PAGE]

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto all as of the date first above written.

ELAN PHARMACEUTICALS, INC.

By: \_\_\_\_\_

Name: Jack Laflin  
Title: Executive Vice President,  
Global Core Services

ACORDA THERAPEUTICS, INC.

By: \_\_\_\_\_

Name:  
Title:

S-1

---

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto all as of the date first above written.

ELAN PHARMACEUTICALS, INC.

By: \_\_\_\_\_  
Name:  
Title:

ACORDA THERAPEUTICS, INC.

By: /s/  
Name: Ron Cohen  
Title: President and CEO

S-1

---

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

## **ELAN DISCLOSURE SCHEDULE**

*The following matters are disclosures made in connection with the representations and warranties of Elan Pharmaceuticals, Inc., a Delaware corporation (“EPI”), set forth in the Asset Purchase Agreement (the “Agreement”) by and between EPI and Acorda Therapeutics, Inc., a Delaware corporation (“Acquiror”) and delivered in connection with the execution and delivery of the Agreement by EPI. Section numbers used herein correspond to the section numbers in the Agreement; provided, however, that any information disclosed herein under a particular section number shall be deemed to be disclosed and incorporated into another section number contained herein if such information reasonably relates to the representation and warranty in the Agreement that corresponds to such other section number. Except as otherwise stated or where the context indicates otherwise, all capitalized terms used herein shall have the meanings given them in the Agreement.*

*Nothing herein constitutes an admission against M’s interests. The inclusion of any item herein should not be interpreted as indicating that EPI has determined that such item or other matter is necessarily material to Acquiror. Acquiror acknowledges that certain information contained in this Elan Disclosure Schedule may constitute confidential information relating to EPI and/or its Affiliates, and therefore may be subject to the confidentiality provisions contained in the Agreement. Where the terms of disclosure items may have been summarized, disclosed or otherwise described in this Elan Disclosure Schedule, such summary, disclosure or description does not purport to be a complete statement of the material terms of such item. For the avoidance of doubt, and notwithstanding anything in the Agreement or herein to the contrary, the contents of each document made available to Acquiror in the dataroom by M for due diligence purposes shall be deemed to be disclosed and incorporated into each section number contained herein if such contents reasonably relate to the representation and warranty in the Agreement that corresponds to such section number.*

---

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

Schedule 1.01 (a) - Closing Date Inventory Value -valuation methodology

<u>Lot Number</u>	<u>Strength</u>	<u>Units per lot</u>	<u>Unit price</u>
37584	4 mg	[***]	[***]
37583	4 mg	[***]	[***]
23934(a)	4 mg	[***]	N/A(b)
23934(a)	4 mg	[***]	N/A(b)
33535(a)	2 mg	[***]	N/A(b)
37329(a)	2 mg	[***]	N/A(b)
37329(a)	2 mg	[***]	N/A(b)

---

(a) Denotes Inventory having a shelf life of less than 12 months from the Closing Date.

(b) Each such batch will be included for an aggregate purchase price (for all such batches) of [\*\*\*].

Schedule 1.01(b) – Domain Names

ZANAFLEX.BIZ  
ZANAFLEX.COM  
ZANAFLEX.INFO  
ZANAFLEX.NET  
ZANAFLEX.ORG  
ZANAFLEX.US

Schedule 1.01(c) – Excluded Books and Records

1. All information provided to EPI or its Affiliates by or pursuant to contracts with IMS Health, Verispan, L.L.C. (formerly, Scott Levin) and NDC Health Information Services.
2. EPI shall not be providing to Acquiror any Books and Records or Know-How embodying any calculation methods or policies, processes or procedures relating to government or commercial rebates and chargeback claims.

Schedule 1.01(d) – Product Copyrights

1. No Copyrights have been registered with the U.S. Copyright Office.
  2. All Copyrights in the Product Books and Records (including for the avoidance of doubt the Product Marketing Materials) and the Labeling.
-

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

Schedule 1.01(e) – Product Know-How

All Know-How contained in, and in the data underlying, the following clinical study reports:

Protocol Number	Title
AN021-301	A Placebo-Controlled, Double-blind, Randomized, parallel Groups, Single Dose Study to Assess Efficacy and Safety of Tizanidine Hydrochloride – Modified Release in Patients with Spasticity due to Multiple Sclerosis or Spinal Cord Impairment Treated with 24 or 48 mg
AN021-302	A Placebo-Controlled, Double-Blind, Randomized, parallel Groups Study to Assess Efficacy and Safety of Tizanidine Hydrochloride – Modified Release at Stable Dose in Patients with Spasticity due to Multiple Sclerosis or Spinal Cord Impairment
AN021-351	Open-Label Study of Tizanidine Hydrochloride – Modified Release in Patients with Spasticity Due to Multiple Sclerosis or Spinal Cord Impairment
AN021-002	A Multicenter, Open-Label, Long Term Study to Evaluate the Safety of Tizanidine Tablets in Patients Suffering from Spasticity due to Multiple Sclerosis
AN021-004	A Multicenter, Open-Label, Long-Term Study to Evaluate the Safety of Tizanidine Tablets in Patients Suffering from Spasticity Resulting from Spinal Cord Injury
AN021-103	A Pharmacokinetic Study to Evaluate the Bioequivalence of Zanaflex (Tizanidine Hydrochloride) 2 x 2 mg Tablets, with Varying Storage Times, Administered to Healthy subjects
AN021-401	An Open-Label Study to Assess the Long-Term Safety of Zanaflex (tizanidine HCl) in Patients Treated with 28 to 36 mg/day.
AN021-456	Open Label Dose Titration Study of the Safety and Efficacy of Zanaflex (tizanidine HCl) in Chronic Daily Headache Prophylaxis.

Notwithstanding the foregoing or anything in the Agreement or herein to the contrary, neither EPI nor any of its Affiliates makes any representations or warranties of any nature regarding such study reports or the underlying data.

Schedule 1.01(f) – Product Patent Rights

1. U.S. Patent No. 6,455,557 dated September 24, 2002.
2. U.S. Patent Application No. 10/645,840, filed August 22, 2003.

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

Schedule 1.01(g) – Product Trademarks

1. The Trademark “Zanaflex” is used in the United States (registration number 1906277).
2. The Trademark “Zana *flex* ” is used in the United States (registration number 2383531).

Schedule 2.01 (a) – Assumed Contracts

The Novartis License Agreement (including the amendment to such agreement dated May 3, 1991 and the Addendum to such agreement dated February 24, 1995, which documents constitute all of the amendments to the Novartis License Agreement).

Schedule 2.01(g) – Other Purchased Assets

None.

Schedule 6.03(a) – Elan Governmental Consents

1. EPI will be required to notify the FDA in writing of the transfer of the Product Registrations to Acquiror. EPI will so notify the FDA within five (5) Business Days after the date hereof.
2. In order for EPI’s Affiliate Elan Pharma International Limited to perform its obligations under the Supply Agreement, each of IND 63-884 and NDA 21-447 will have to be in effect and are now and will be immediately after the Closing in full force and effect.

Schedule 6.03(b) – Elan Third Party Consents

The Novartis License Agreement requires Novartis’ consent to assignment.

Schedule 6.05 – Material Contracts

1. The Novartis License Agreement.
2. Rebate Agreement by and between Argus Health Systems, Inc. and EPI dated as of January 2, 2002 (the “Argus Agreement”).
3. Rebate Agreement by and between Coventry Health Care, Inc. and EPI dated as of January 1, 2001, as amended (the “Coventry Agreement”).
4. Rebate Agreement by and between Horizon Healthcare of New Jersey, Inc. and EPI dated as of January 1, 2001, as amended (the “Horizon Agreement”).

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

5. Rebate Agreement by and between Intermountain Health Care Health Plans, Inc. and EPI dated as of January 1, 2001, as amended (the “Intermountain Agreement”).
6. Agreement by and between Merck-Medco Managed Care, L.L.C. (as successor-in-interest to Merck-Medco Managed Care, Inc. and Managed Care LLC) and EPI (as successor-in-interest to Athena Neurosciences, Inc.) dated as of July 1, 1996, as amended (the “Merck-Medco Agreement”).
7. Rebate Agreement by and between Medimpact Healthcare Systems, Inc. and EPI dated as of April 1, 2002 (the “Medimpact Agreement”).
8. Rebate Agreement by and between Pharmacare Management Services, Inc. and EPI dated as of July 1, 2000 (the “Pharmacare Agreement”).
9. Rebate Agreement by and between Security Health Plan (“Security Health”) and EPI dated as of January 1, 2002 (the “Security Health Agreement”).
10. Safety Data Exchange Agreement between EPI and Novartis Pharma AG dated as of February 13, 2002.
11. Safety Data Exchange Agreement between EPI and Medeus Pharma Limited dated as of March 16, 2004.
12. Agreement by and among Glaxo Group Limited (“Glaxo”) and EPI’s Affiliates Elan Corporation, plc (“Elan”) and Athena Neurosciences, Inc. (“Athena”) dated as of August 6, 1997 (the “Glaxo Agreement”).
13. Agreement between Pharmacia & Upjohn Company (“Pharmacia”) and Athena dated as of October 30, 1998 (the “Pharmacia Agreement”).

Schedule 6.07(a)(i) and (ii) – Certain Contracts Relating to – Product Intellectual Property

1. The Novartis License Agreement contains indemnification obligations of EPI that include claims relating to infringement of Purchased Intellectual Property. In addition, such agreements contain indemnification obligations of Novartis that include claims relating to Purchased Intellectual Property and that provide that Novartis shall have certain rights to control the defense of such claims.
2. The Argus Agreement contains indemnification obligations of EPI that include claims relating to infringement of Purchased Intellectual Property.
3. The Coventry Agreement contains indemnification obligations of EPI that include claims relating to infringement of Purchased Intellectual Property.

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

4. The Horizon Agreement contains indemnification obligations of EPI that include claims relating to infringement of Purchased Intellectual Property.
5. The Intermountain Agreement contains indemnification obligations of EPI that include claims relating to infringement of Purchased Intellectual Property.
6. The Medimpact Agreement contains indemnification obligations of EPI that include claims relating to infringement of Purchased Intellectual Property.
7. The Pharmacare Agreement contains indemnification obligations of EPI that include claims relating to infringement of Purchased Intellectual Property.
8. The Security Health Agreement contains indemnification obligations of EPI that include claims relating to infringement of Purchased Intellectual Property.

Schedule 6A7(a)(iv) – Covenant Not to Sue Relating to Purchased Intellectual Property

In the Glaxo Agreement, Elan and Athena agreed not to object to Glaxo's use or registration of the mark "ZANTAC" in certain circumstances.

Schedule 6.07(h) – Certain Proceedings Relating to Product Intellectual Property

1. Petition for Cancellation of Registration No. 1,906,277 filed by Glaxo Group Limited, which was settled pursuant to the Glaxo Agreement.
2. Petition for Cancellation of Registration No. 1,906,277 and Notice of Opposition No. 108,684, each filed by Pharmacia and settled pursuant to the Pharmacia Agreement.

Schedule 6.08 – Litigation

The events described in the MedWatch reports submitted to Acquiror in the dataroom for due diligence present bases for Actions or Proceedings relating to the Purchased Assets or the Business.

Schedule 6.09 – Compliance with Law

1. Neither EPI nor any of its Affiliates makes any representations or warranties of any nature relating to promotional, marketing or training materials relating to the Products.
2. On February 23, 2004, EPI was notified by Novartis that Novartis failed to provide EPI adverse event reports from the period from July 1, 1999 through March 9, 2004. On April 7, 2004, EPI submitted to the FDA 139

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

MedWatch reports as prepared by Novartis, together with EPI's adjudication of each adverse event. These materials were submitted within the statutorily-required time period, but were not prepared by EPI. EPI did not submit, and has not been requested by the FDA to submit, a corrective action plan relating to these adverse events.

3. The annual report for NDA 20-397 was due on January 26, 2004 and has not yet been submitted.
4. As a result of the following article: Granfors MT. Backman JT. Neuvonen M. Ahonen J. Neuvonen PJ. Fluvoxamine drastically increases concentrations and effects of tizanidine: a potentially hazardous interaction. [Clinical Trial. Clinical Trial, Phase II. Journal Article. Randomized Controlled Trial] *Clinical Pharmacology & Therapeutics*. 75(4):331-41, 2004 Apr. (the "Clinical Article"), EPI has undertaken to amend EPI's Labeling for Zanaflex Tablets to include an additional precaution. EPI has also undertaken to update such Labeling to include certain information that was included in the combined Labeling that was approved for Zanaflex Tablets and Zanaflex Capsules. EPI shall not be obligated to continue such undertakings after the Closing, but the foregoing shall not reduce or otherwise affect EPI's retention of Excluded Liabilities or other covenants in the Agreement.

Schedule 6.11 – Customers and Suppliers

*Top 10 wholesale customers for the fiscal year ended December 31, 2003 for Zanaflex Tablets 2mg:*

[\*\*\*]  
[\*\*\*]  
[\*\*\*]  
[\*\*\*]  
[\*\*\*]  
[\*\*\*]  
[\*\*\*]  
[\*\*\*]  
[\*\*\*]  
[\*\*\*]

*Top 10 wholesale customers for the fiscal year ended December 31, 2003 for Zanaflex Tablets 4mg:*

[\*\*\*]  
[\*\*\*]  
[\*\*\*]  
[\*\*\*]  
[\*\*\*]  
[\*\*\*]

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

[\*\*\*]  
[\*\*\*]  
[\*\*\*]  
[\*\*\*]  
[\*\*\*]  
[\*\*\*]

*Supplier of active pharmaceutical ingredient:*

Novartis

**Schedule 6.12 – Certain Governmental Permits**

1. EPI is required to have wholesaler/distribution licenses in each state where the Products are sold. Such licenses have not been delivered to Acquiror.
2. NDA 20-397.
3. NDA 21-447.
4. IND 37-891.
5. IND 63-884.
6. IND 59-464.
7. On February 23, 2004, EPI was notified by Novartis that Novartis failed to provide EPI adverse event reports from the period from July 1, 1999 through March 9, 2004. On April 7, 2004, EPI submitted to the FDA 139 MedWatch reports as prepared by Novartis, together with EPI's adjudication of each adverse event. These materials were submitted within the statutorily-required time period, but were not prepared by EPI. EPI did not submit, and has not been requested by the FDA to submit, a corrective action plan relating to these adverse events.
8. The annual report for NDA 20-397 was due on January 26, 2004 and has not yet been submitted.
9. As a result of the Clinical Article, EPI has undertaken to amend EPI's Labeling for Zanaflex Tablets to include an additional precaution. EPI has also undertaken to update such Labeling to include certain information that was included in the combined Labeling that was approved for Zanaflex Tablets and Zanaflex Capsules. EPI shall not be obligated to continue such undertakings after the Closing, but the foregoing shall not reduce or otherwise affect EPI's retention of Excluded Liabilities or other covenants in the Agreement.

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

Schedule 8.06 – Multi-Product Contracts

1. The Argus Agreement.
2. The Coventry Agreement.
3. The Horizon Agreement.
4. The Intermountain Agreement.
5. The Merck-Medco Agreement.
6. The Medimpact Agreement.
7. The Pharmacare Agreement.
8. The Security Health Agreement.
9. EPI's contract with the Veteran's Administration is also a Multi-Product Contract, but notwithstanding anything to the contrary contained in the Agreement or herein, such contract will not be terminated.

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

**Exhibit 6.13**

[\*\*\*]

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

## **ACQUIROR DISCLOSURE SCHEDULE**

*The following matters are disclosures made in connection with the representations and warranties of Acorda Therapeutics, Inc., a Delaware corporation (Acquiror”), set forth in the Asset Purchase Agreement (the “Agreement”) by and between Elan Pharmaceuticals, Inc. (“EPI”) and Acquiror and delivered in connection with the execution and delivery of the Agreement by Acquiror. Section numbers used herein correspond to the section numbers in the Agreement; provided, however, that any information disclosed herein under a particular section number shall be deemed to be disclosed and incorporated into another section number contained herein if such information reasonably relates to the representation and warranty in the Agreement that corresponds to such other section number. Except as otherwise stated or the where the context indicates otherwise, all capitalized terms used herein shall have the meanings given them in the Agreement.*

*Nothing herein constitutes an admission against Acquiror’s interests. The inclusion of any item herein should not be interpreted as indicating that Acquiror has determined that such item or other matter is necessarily material to EPI. EPI acknowledges that certain information contained in this Acquiror Disclosure Schedule may constitute confidential information relating to Acquiror and/or its Affiliates, and therefore may be subject to the confidentiality provisions contained in the Agreement. Where the terms of disclosure items may have been summarized, disclosed or otherwise described in this Acquiror Disclosure Schedule, such summary, disclosure or description does not purport to be a complete statement of the material terms of such item.*

---

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

Schedule 7.03(a) – Acquiror Governmental Consents

[\*\*\*]

Schedule 7.03(b) – Acquiror Third Party Consents

None.

**Exhibit 10.21**

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

ELAN PHARMA INTERNATIONAL LIMITED

AND

ACORDA THERAPEUTICS, INC,

---

ZANAFLEX SUPPLY AGREEMENT

---

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

**THIS SUPPLY AGREEMENT** (this “**Agreement**”) is made on July 21, 2004 (the “**Effective Date**”)

**BETWEEN:**

- (1) **ELAN PHARMA INTERNATIONAL LIMITED**, a company incorporated in Ireland (registered no. 222276) (“**Elan**”); and
- (2) **ACORDA THERAPEUTICS, INC.**, a Delaware corporation whose registered office is at 15 Skyline Drive, Hawthorne, NY 10532 (“**Buyer**”).

**RECITALS:**

- (A) Pursuant to that certain Asset Purchase Agreement between Buyer and Elan Pharmaceuticals, Inc. (“**EPI**”), dated July 21, 2004 (the “**Purchase Agreement**”), Buyer acquired (among other assets) the rights and authorisations necessary to market and sell the Products (as defined below) in the Territory (as defined in the Asset Purchase Agreement).
- (B) Elan has agreed to manufacture and supply the Products to Buyer, and Buyer has agreed to purchase the Products for onward commercial supply on the terms and conditions set out in this Agreement.

**NOW IT IS HEREBY AGREED AS FOLLOWS:**

**1. INTERPRETATION**

1.1 In this Agreement:

“**Affected Item**” shall have the meaning given to such term in Clause 10.3;

“**Affected Obligation**” shall have the meaning given to such term in Clause 20.1;

“**Affected Party**” shall have the meaning given to such term in Clause 20.1;

“**Affiliate**” shall mean, with respect to any person or entity, any other person or entity which Controls, is Controlled by or is under common Control with such person or entity;

“**Alternate Manufacturer**” shall have the meaning given to such term in Clause 11.4;

“**Beneficiary**” shall have the meaning given to such term in Clause 13.8.2;

“**Business Day**” shall mean a day other than a Saturday or Sunday or public holiday in England and Wales, and Ireland;

“**cGMP**” shall mean current Good Manufacturing Practice under the applicable laws and regulations in the United States, Ireland and the European Union;

---

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

“**Confidential Information**” shall have the meaning given to such term in Clause 15.1;

“**Control**” means (a) ownership (directly or indirectly) of at least fifty percent (50%) of the shares of stock entitled to vote for the election of directors in the case of a company or corporation; or (b) the ability (directly or indirectly) otherwise to direct and control the actions of a person or entity.

“**Covenantor**” shall have the meaning given to such term in Clause 13.8.2;

“**Disclosing Party**” shall have the meaning given to such term in Clause 17.1;

“**Due Date**” shall have the meaning given to such term in Clause 9.4;

“**Elan’s Facility**” shall mean Elan’s manufacturing facility located at Monksland, Athlone, Co. Westmeath, Ireland or Elan’s Affiliate’s manufacturing facility located at Gainesville, Georgia, U.S.A., or such other manufacturing facility as Elan may from time to time specify (provided that any facility so specified has received all required Facility Licences and Elan has provided Buyer with advance notice sufficient to amend its NDA to include such facility if Elan intends to use a facility other than the one located at Monksland, Athlone, described above);

“**Ex Works**” and “**EXW**” shall have the meaning as such term is defined in the ICC Incoterms, 2000, International Rules for the Interpretation of Trade Terms, ICC Publication No. 560;

“**Facility Licences**” means all required licenses, approvals, permits and authorizations required by any Governmental Authority or law or regulation to manufacture, package or store Products, or, to the extent required for Elan to perform under this Agreement, to ship or export Products;

“**Force Majeure Event**” means an event beyond the control of the Affected Party which makes the Affected Party’s performance of an obligation impossible (or such an event that makes such performance so impractical as to be reasonably to be considered impossible) including, without limitation, strike, lock-out, labour dispute, act of God, war, armed conflict, terrorism, riot, civil commotion, malicious damage, explosion, earthquake, fire, flood, storm or other extraordinary adverse weather conditions.

“**Governmental Authority**” shall mean each governmental and regulatory body, agency, department or entity, whether or not located in the Territory, which regulates, directs or controls commerce in or with any territory or location;

“**Index**” shall mean the Irish consumer price index or such other index as may replace it from time to time; or if there is no replacement, such published Irish index as Elan in its discretion considers to be the closest comparator to the same;

“**Initial Term**” shall have the meaning given to such term in Clause 11.1;

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

**“Knowledge”** of a particular fact or other matter means: (i) with respect to any individual; (A) the actual knowledge of such individual concerning such fact or other matter; and (B) the knowledge that a prudent individual would be expected to discover or otherwise become aware of in the course of conducting a reasonable investigation concerning the existence of such fact or other matter; and (ii) with respect to Elan or Buyer, the Knowledge concerning such fact or other matter of (1) the officers of such party, (2) the directors of such party, and (3) the senior managers of such party with responsibility for, or supervision of, the relevant matters; provided that under no circumstances shall Knowledge of Elan include any knowledge not actually known to such persons but imputed to such persons or Elan due to its or its Affiliates’ relationship with Novartis Pharma AG (“**Novartis**”) or its representatives; and provided, further, that none of such persons shall have any obligation as a result of entering into (or any provision of) this Agreement, the Purchase Agreement or any related Agreement to make any inquiries of Novartis or its representatives regarding any matter.

**“Loss”** shall mean any loss, liability, or cost (including reasonable attorneys’ fees and expenses) which is incurred by a party;

**“Medical Claim”** shall have the meaning given to such term in Clause 13.7;

**“Minor Deficiencies and Delays”** shall mean (i) shortfalls that are consistent with industry accepted standards, but not to exceed 10% of the amount ordered (ii) delays in delivery of the Products not exceeding 30 days from the delivery date or such other period of delay as may be agreed between the Parties;

**“Monthly Forecast Report”** shall have the meaning given to such term in Clause 4.1.1;

**“Production Licence”** shall have the meaning given to such term in Clause 11.4;

**“Products”** means pharmaceutical products containing tizanidine as their active pharmaceutical ingredients and having a multi-particulate capsule formulation currently approved by the FDA pursuant to NDA No. 21-447 to be marketed in the Territory.

**“Product Specifications”** shall mean the specifications for the Products contained in the relevant Regulatory Approvals issued by the authorities in the Territory, and such additional or amended specifications for such Products as may be effected under the terms of this Agreement;

**“Regulatory Application”** shall mean any application for a Regulatory Approval, which is filed in the Territory following the Effective Date, including any supplements or amendments thereto;

**“Regulatory Approval”** shall mean the final approval required from a governmental regulatory authority to market a Product in the Territory, and any other approval which is required to market or sell such Product or otherwise necessary for Buyer to perform under this Agreement or otherwise handle the Products;

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

“**Relevant Claim**” shall have the meaning given to such term in Clause 13.8;

“**Renewal Term**” shall have the meaning given to such term in Clause 11.1;

“**Serious Failure to Supply**” shall mean that in a period of a calendar year, for reasons other than Force Majeure, a shortage of tizanidine caused by events or third parties not under the control of Elan, or the default of Buyer, Elan fails on at least two consecutive occasions to supply Buyer’s properly forecasted and ordered requirements of the Products in accordance with the terms of this Agreement, except for Minor Deficiencies and Delays, and the cumulative shortfall for such calendar year attributable to such failure(s) is at least 35% of the aggregate amount properly forecasted and ordered from Elan for delivery in such calendar year; provided that, for purposes of this definition the timely supply of Products that breach the representations and warranties made in Clause 13.2 (excluding such Products with nonlatent defects) will be deemed not to be a failure to supply Buyer’s properly forecasted and ordered requirements of the Products in accordance with the terms of this Agreement;

“**Specified Delivery Date**” shall have the meaning given to such term in Clause 4.3;

“**Technical Agreement**” shall have the meaning given to such term in Clause 3.9;

“**Technological Competitors**” shall mean those entities, including any entities that are subsidiaries or successors in interest to such entities, set out in Schedule 3;

“**Term**” shall mean the Initial Term plus any applicable Renewal Term;

“**Territory**” means the United States of America, its territories and possessions and the Commonwealth of Puerto Rico;

“**VAT**” means; (a) any tax imposed in compliance with the Sixth Directive of the Council of the European Economic Communities (77/388/EEC); and (b) any other tax of a similar fiscal nature, whether imposed in a member state of the European Union in substitution for or in addition to such tax, or imposed elsewhere;

“**VAT Amount**” shall have the meaning given to such term in Clause 10.2; and

“**\$**” and “**US\$**” shall mean United States Dollars.

1.2 In this Agreement a reference to:

1.2.1 the singular includes the plural and vice versa;

1.2.2 a “**person**” includes a reference to a corporation, corporate body, association or partnership;

1.2.3 any reference to a “**Clause**” or “**Schedule**”, unless the context otherwise requires, is a reference to a clause or schedule of this Agreement; and

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

- 1.2.4 any person shall (where appropriate), in respect of any provisions relating to VAT, be deemed at any time when such person is a member of a group for the purposes of section 43 to 43C of the Value Added Tax Act 1994 (or in relation to a jurisdiction other than the United Kingdom, such legal term or concept as most closely corresponds to it) to include a reference to the representative member (or in relation to a jurisdiction other than the United Kingdom, such legal term or concept as most closely corresponds to it) of such group at such time.
- 1.3 The headings of this Agreement are for ease of reference only and shall not affect its construction or interpretation.
- 1.4 In this Agreement, the expressions “**include**”, “**includes**” and “**including**” shall be construed without limitation.

## **2. EXCLUSIVE SUPPLY**

- 2.1 During the Term, subject to Clause 11.4, (Buyer shall purchase all of its (and its Affiliates) requirements of the Products in the Territory exclusively from Elan, and Elan shall supply all such Products under the terms of this Agreement.

## **3. REGULATORY MATTERS**

- 3.1 Following the transfer of the Regulatory Approvals to Buyer pursuant to the terms of the Purchase Agreement, Buyer shall (at its own expense) be responsible for obtaining and maintaining all Regulatory Approvals for the Products with the appropriate Governmental Authority. Subject and pursuant to the provisions of the Purchase Agreement and Interim Services Agreement between EPI and Buyer, Elan shall provide all information and assistance reasonably requested by Buyer needed to transfer and obtain such Regulatory Approvals.
- 3.2 Each of Elan and Buyer shall, without delay, provide to the other party such copies of all Regulatory Approvals, Regulatory Applications, Facility Licenses and communications with any Governmental Authority to the extent necessary for such other party to comply with its obligations under this Agreement.
- 3.3 Elan shall, at Elan’s expense, be responsible for obtaining and maintaining any and all export or import licences or clearances relating to the raw materials and any other intermediary products contained in the Products, together with any and all Facility Licenses. Elan shall provide Buyer copies of all such Facility Licenses at Buyer’s request. Elan shall ensure that each Elan Facility complies with all laws, regulations and licensing requirements applicable to the manufacture of Products in compliance with the Product Specifications and cGMP. At the request of Buyer, Elan shall take the steps necessary to qualify its Affiliate’s Gainesville, Georgia, U.S.A. facility to manufacture the Product, including but not limited to obtaining all required Facility Licenses; provided that

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

all reasonable costs of Elan, its Affiliates or its consultants actually incurred in connection with such qualifications shall be borne by Buyer (as long as such costs are approved by Buyer in advance, such approval not to be unreasonably withheld or delayed).

- 3.4 Buyer shall promptly provide to Elan the packaging and related artwork for the Products, which packaging and artwork must comply with the relevant Regulatory Approvals. Buyer shall be responsible for granting final approval of the pre-press proofs of such artwork.
- 3.5 Buyer shall be responsible for obtaining and maintaining any necessary export or import licences or clearances in respect of the Products. Elan shall provide to Buyer reasonable assistance and any documents in its possession which are reasonably necessary for that purpose.
- 3.6 Each party shall notify the other party as soon as possible (and in no event later than 48 hours) of any notification received by it from a Governmental Authority to conduct an inspection of the facilities used hereunder in the development, manufacturing, packaging, storage or handling of the Products. Each party shall promptly provide to the other party copies of all correspondence with a Governmental Authority relating to any such notification or inspection received or sent by it to the extent that such correspondence relates to the Products. Each party shall have a duty to reasonably cooperate with the other party with respect to such inspections at such other party's facilities.
- 3.7 Upon reasonable request, Elan shall make that portion of its facility where the Products are manufactured, tested or stored, including all record and reference samples, available for inspection:
  - 3.7.1 upon reasonable notice and during normal business hours, by Buyer's duly qualified employee or, with the consent of Elan (not to be unreasonably withheld or delayed), by Buyer's duly qualified agent or contractor; or
  - 3.7.2 by a relevant Governmental Authority.
- 3.8 An inspection under Clause 3.7.1 shall be limited to determining whether there is compliance with cGMP and other requirements of applicable law.
- 3.9 To the extent that any or all of the raw materials or intermediary products contained in the Products are not produced by Elan, Elan shall ensure that such materials or products are suitable for manufacturing the Products in compliance with applicable Regulatory Approvals, Facility Licenses and the Product Specifications and meet all other applicable legal and regulatory requirements.
- 3.9 As soon as is practicable after the Effective Date. Elan and Buyer shall enter into a mutually-agreeable technical agreement (the "**Technical Agreement**") relating

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

to quality assurance, acceptance testing and other requirements to be agreed by the parties.

#### 4. FORECASTS AND ORDERS

- 4.1 In order to permit Elan to allocate its manufacturing capacity and to assist Buyer with its sales and marketing, Buyer shall provide Elan with bona fide written forecasts of its requirements for each of the Products as follows:
  - 4.1.1 By thirty (30) days after the Effective Date, and thereafter each calendar month not later than the 23rd of the month, an 18-month forecast (commencing at the beginning of the following month), broken down by month (each, a “**Monthly Forecast Report**”); and
  - 4.1.2 not later than 1 July in each year, a two-year forecast, broken down by year.
- 4.2 The aggregate amount of Products forecasted to be required in the first twelve (12) months of each Monthly Forecast Report shall, unless otherwise agreed by Elan, not increase or decrease by more than twenty-five percent (25%) as compared to the first twelve (12) months of the forecast three months prior; provided, however, that until there exists a Monthly Forecast Report from three months prior to the then-current Monthly Forecast Report, the initial Monthly Forecast Report shall be used for purposes of such comparison.
- 4.3 Buyer shall be bound to order one hundred percent (100%) of the forecast required quantities of the Products in each respective month of the period of five (5) months immediately following each Monthly Forecast Report, but otherwise forecasts shall not be binding. With respect to such orders, Buyer shall submit to Elan a written purchase order for such required quantities of Products, specifying the order quantity and the date on which delivery of the order is required (the “**Specified Delivery Date**,” which shall in no event be earlier than one hundred fifty (150) days after the date of Elan’s receipt of such written purchase order). For the avoidance of doubt, the parties acknowledge and agree that, notwithstanding anything to the contrary contained in this Agreement, other than pursuant to the preceding two sentences Buyer shall not be obligated to place any minimum number of orders under this Agreement.
- 4.4 Elan shall not be obligated to supply Products in excess of Buyer’s requirements as forecast in accordance Clauses 4.1, 4.2 and 4.3.
- 4.5 Notwithstanding Clauses 4.1, 4.2, 4.3 and 4.4, Elan will use its commercially reasonable efforts to fulfill Buyer’s requirements in excess of forecasted amounts.
- 4.6 The order quantity shall be in whole number multiples of the minimum batch size of the Products, which minimum batch size shall be as set out in Schedule 1;

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

provided, however, that upon the request of Buyer, Elan will discuss with Buyer in good faith the reduction of minimum batch sizes set out in Schedule 1 (and any related amendment to Schedule 1); and provided, further, that all reasonable costs of Elan, its Affiliates or its consultants actually incurred in connection with the reduction of such minimum batch sizes shall be paid by Buyer (as long as such costs are approved by Buyer in advance, such approval not to be unreasonably withheld or delayed). Elan shall have the right to refuse to fulfil any amount of an order which does not conform with the provisions of this Clause 4.6. Where Elan in its sole discretion fulfils any order which does not conform with the provisions of this Clause 4.6, the fulfilment of such order by Elan shall not affect Elan's right to refuse to fulfil any subsequent order which does not conform with the provisions hereof.

- 4.7 Buyer hereby agrees that it shall not use Products delivered to Buyer in bulk capsule form for packaging into finished Products for commercial sale.
- 4.8 To the extent that at any time during the Term Buyer notifies Elan of its intention to sell finished Products that Buyer is then holding in inventory as "safety stock", (a) all then current purchase orders shall remain in place, and (b) Elan agrees to discuss in good faith with Buyer the modification of the Monthly Forecast Report most recently submitted by Buyer (including disregarding the provisions of Clause 4.2 with respect thereto).
- 4.9 The terms of this Agreement are hereby incorporated by reference into each written purchase order for Products submitted by Buyer and accepted by Elan. In the event of any conflict between an order or other written instructions and this Agreement, the terms of this Agreement shall prevail.

## **5. SUPPLY OF THE PRODUCTS**

- 5.1 Elan shall supply the Products requested in each written purchase order by the Specified Delivery Date (subject to the 30-day cure period specified in Clause 11.2.1).
- 5.2 Each Product supplied by Elan to Buyer shall:
  - 5.2.1 be in final market packaging in accordance with written standards agreed by the parties from time to time;
  - 5.2.2 be Ex Works Elan's Facility;
  - 5.2.3 be free from any liens or encumbrances;
  - 5.2.4 conform to, and be manufactured in accordance with, the relevant Product Specifications and all applicable laws and regulations, including applicable cGMP;

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

- 5.2.5 be in suitable packaging in a sealed tamper-evident container and labelled in accordance with Buyer's reasonable requirements communicated to Elan, in particular as required pursuant to any Regulatory Approval and so as to permit safe storage and transport; and
- 5.2.6 be accompanied by a certificate of analysis and a certificate of release, in each case in a form conforming to industry standards as mutually agreed between Elan and Buyer.

## **6. CHANGES TO PRODUCT SPECIFICATIONS**

### **6.1 If:**

- 6.1.1 changes to the Product Specifications are required by law or by any Governmental Authority; or
- 6.1.2 Buyer reasonably requests changes to the Product Specifications;

Elan shall promptly implement any such changes at Buyer's sole cost (such cost to include but not be limited to Elan's internal and external costs relating to changes to artwork and labeling and changes to raw materials, intermediary products and components, in each case whether such costs are out-of-pocket costs or write-off charges (to the extent such write-off charges are actually incurred by Elan and Elan has attempted in good faith to avoid such write-off charges by making other use of the applicable materials, products or components); provided, that Elan shall provide Buyer with advance notice of such changes and the estimated costs thereof and Buyer shall have the opportunity to discuss with Elan any of such changes or costs prior to such changes being implemented for up to two (2) weeks after Buyer receives such notice; and, provided, further, that with respect to then-outstanding purchase orders submitted by Buyer pursuant to Clause 4.3, to the extent that applicable law or any Governmental or Regulatory Authority does not allow Elan to manufacture and deliver to Buyer, or Buyer to sell, Products ordered under such purchase orders, Elan shall be permitted to delay delivery of Products ordered thereunder for an amount of time equal to the actual delay in making the changes required by changes in Product Specifications caused by compliance with this Clause 6.1 (it being understood and agreed by Buyer that it shall accept Products ordered under such purchase orders despite such Products being manufactured to Product Specifications that do not reflect the changes required by this Clause 6.1, to the extent that applicable law or any Governmental or Regulatory Authority allows Elan to manufacture and deliver to Buyer, and Buyer to sell, such Products). Otherwise, changes shall only be made to the Product Specifications by agreement between the parties.

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

## 7. DISPUTES AS TO SPECIFICATIONS

- 7.1 All claims for failure of any Product to conform to the Product Specifications must be made by Buyer in writing within sixty (60) days following delivery, except in the case of latent defects. Claims for latent defects, not discovered during the routine testing protocol (which is to be agreed between the parties reasonably and in good faith), shall be made in writing within forty-five (45) days of discovery. Except as described in the preceding sentence, failure to make timely claims in the manner prescribed in this Clause 7.1 shall constitute acceptance of the delivery.
- 7.2 Where Products which have been delivered breach the representations and warranties made in Clause 13.2 (and Clause 7.1 has been complied with) and such non-conformity is attributable to acts or omissions of Elan:
- 7.2.1 they shall be reworked (to the extent permitted by applicable law) or replaced at Elan's cost within ninety (90) days of the receipt by Elan of the non-conforming Products; and
  - 7.2.2 Elan shall reimburse Buyer in respect of the costs incurred by Buyer in relation to any testing, handling, destruction or return of the Products.

Notwithstanding Clause 11.2.1, no cure period shall apply with respect to Products described in Clause 7.2 other than that set forth in Clause 7.2.1. Other than as expressly set forth elsewhere in this Agreement in Clause 13.6, and with respect to Serious Failures to Supply and Product recalls, Buyer shall have no remedies in respect of Elan having supplied Products that breach the representations and warranties made in Clause 13.2 other than as set out in this Clause 7.2.

- 7.3 In the event of an unresolved dispute:
- 7.3.1 as to conformity of a Product with the relevant Product Specifications pursuant to Clause 7.1 or 8.3; or
  - 7.3.2 pursuant to clauses 8.5 or 13.4,

the parties shall appoint an independent first-class laboratory or other appropriate, independent expert to undertake the relevant testing, and its findings shall be conclusive and binding upon the parties. If the parties fail to agree on the appointment of an independent first-class laboratory or expert, as appropriate, within thirty (30) days after the parties first discuss such appointment, the parties agree that an independent party designated by Elan and an independent party designated by Buyer shall together select a mutually-acceptable, appropriate, independent expert. Such independent expert shall undertake the relevant analysis and/or testing and report its findings within a reasonable time of

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

appointment, which findings shall be conclusive and binding upon the parties. All costs relating to this process shall be borne solely by the unsuccessful party.

## **8. ADVERSE EVENTS AND PRODUCT RECALL**

8.1 Each party shall, without delay, give notice to the other of any occurrence that involves:

- 8.1.1 any complaint about the safety, quality, packaging or effectiveness of a Product manufactured or supplied under this Agreement, including a claim for death or injury following administration of such Product (that is allegedly related to the administration of such Product); and
- 8.1.2 any other matter in connection with a Product manufactured or supplied under this Agreement or arising out of this Agreement that must be reported to a Governmental Authority.

8.2 The parties agree that within sixty (60) days following the Effective Date, representatives of each party with responsibility for the safety, surveillance and pharmacovigilance of the Products shall meet to develop detailed procedures regarding the format, timing and content of the safety information to be exchanged between the parties, and shall meet periodically thereafter to update the procedures.

8.3 If a party:

- 8.3.1 is notified by a Governmental Authority that a recall of a Product is required, requested or otherwise advisable; or
- 8.3.2 establishes a need to recall a Product for non-conformity with the Product Specifications,

it shall promptly give to the other party notice of the same with full details. Notwithstanding any dispute between the parties as to whether the Product complies with the Product Specifications, the recall shall commence but such dispute shall be resolved in accordance with Clause 7.3.

8.4 Unless otherwise agreed or unless Elan elects to take over and perform the recall of the Product pursuant to Clause 8.6.2, Buyer shall take the lead/coordinating role in any recall of the Product in a commercially reasonable manner, and Elan shall afford all reasonable assistance to Buyer in respect of such recall. A joint recall administration team shall be established to support Buyer in such role with an equal number of nominated individuals from each party participating. A final report shall be completed by the recall administration team and delivered promptly to both parties.

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

- 8.5 The costs of a recall of the Product, including the cost of replacement quantities of such Product, shall be borne by Buyer unless (a) the recall arises from Elan's supply of Product that breach the representations and warranties made in Clause 13.2 or from the negligent acts or omissions of Elan in manufacturing the Product, and (b) subject to Clause 13.6, Buyer could not have discovered such failure or acts or omissions prior to the sale of the Product by exercising reasonable diligence in conducting acceptance testing pursuant to the Technical Agreement, in which case Elan shall bear the actual costs of the recall; provided that each party hereby agrees to use commercially reasonable efforts to minimize any costs relating to any recall of the Product that may be borne by the other party. If the parties are unable to agree who should bear the cost of the recall, the dispute shall be settled in the manner set forth in Clause 7.3.
- 8.6 In the event that Elan is required to bear the costs of any recall of the Product in accordance with Clause 8.5, Elan shall:
  - 8.6.1 reimburse Buyer for all reasonable and actual costs and expenses which Buyer incurs in connection with such recall; and
  - 8.6.2 be entitled (but not obliged) to take over and perform the recall of such Product.

## **9. PRICE AND PAYMENT**

- 9.1 The price of the Products shall be:
  - 9.1.1 until the first anniversary of the Effective Date, the price set out in Schedule 1;
  - 9.1.2 thereafter, (and subject to Clause 9.2) at such price as Elan notifies to Buyer from time to time, provided that during the Term (including the Initial Term and any Renewal Term(s)) price increases for the Products shall be limited to the percentage increase in the Index, as compared to the most recent price adjustment.
- 9.2 In addition to any price increases pursuant to Clause 9.1.2, if:
  - 9.2.1 the price which Elan must pay for the active ingredient of, or other raw material used to produce, a Product increases by a percentage in excess of the percentage increase in the Index (as compared to the later of the Effective Date or the most recent price adjustment pursuant to this Clause 9.2);
  - 9.2.2 additional regulatory obligations are imposed on Elan by law or a Governmental Authority; or

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

9.2.3 any other price increase is required or agreed in accordance with Clause 6,

Elan may increase the price of the Products by such amount as is necessary to recover the additional costs of supplying the Products. Elan shall ensure that, where the costs of active ingredients or other raw materials used to produce the Products increase by a percentage in excess of the percentage increase in the Index (as compared to the Effective Date), Elan and Buyer will meet to discuss potential alternative suppliers of such materials.

- 9.3 Payment for supply of all Products shall be made by Buyer in US\$ within ninety (90) days of receipt of the relevant invoice. Payment shall be by means of:

9.3.1 wire transfer to an account designated in writing by Elan from time to time; or

9.3.2 a letter of credit issued by or drawn on by a bank acceptable to Elan.

- 9.4 Buyer shall pay interest to Elan on sums not paid to Elan on the date on which payment should have been made pursuant to the applicable provisions of this Agreement (“**Due Date**”) over the period from the Due Date until the date of actual payment (both before and after judgement) at the prime rate publicly announced by Morgan Guaranty Trust Company of New York at its principal office from time to time plus [\*\*\*] (or, if less, the maximum rate allowed to be charged under applicable laws), such interest to be payable on demand and compounded monthly.

- 9.5 Buyer may demand, no more than once per year, an audit of the relevant books and records of Elan in order to verify any price increases proposed by Elan under Clauses 9.1 or 9.2. Upon no less than sixty (60) days’ prior written notice, Elan shall grant reasonable access during normal business hours to members of an independent public accounting firm selected by Buyer to such relevant books and records of Elan in order to conduct a review or audit thereof. The accounting firm shall report its conclusions and calculations to Buyer and Elan; provided, that in no event shall the accounting firm disclose to Buyer any information of Elan except to the extent necessary to verify the price increases; and, at the request of Elan, such accounting firm will execute appropriate non-disclosure agreements. Unless the results of any such audit indicate that a price increase exceeded the limits provided in Clauses 9.1 and 9.2 by more than [\*\*\*], Buyer shall bear the full cost of the performance of such audit including reasonable administrative costs incurred by Elan during the performance of the audit. If the results of any such audit indicate that a price increase exceeded the limits provided in Clauses 9.1 and 9.2 by more than [\*\*\*], (i) Elan shall bear the full cost of the performance of such audit and (ii) the price shall be reduced to the amount permitted under Clauses 9.1 and 9.2, and (iii) Elan shall refund to Buyer the amount attributable to the difference between the price paid by Buyer and the price allowed by Clause 9.6(ii).

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

## 10. VAT

- 10.1 All sums payable by Buyer to Elan under the terms of this Agreement shall be deemed to be exclusive of any VAT chargeable on the supply for which that sum is the consideration (in whole or in part) for VAT purposes.
- 10.2 If under this Agreement Elan makes a supply to Buyer for VAT purposes, and VAT is or becomes chargeable on that supply, Buyer shall pay to Elan a sum equal to the amount of the VAT chargeable (the “ **VAT Amount** ”) in addition to the consideration payable for the supply. Buyer shall pay the VAT Amount at the same time as paying the consideration payable for the supply or, if later, within five (5) Business Days of the receipt of a valid VAT invoice.
- 10.3 If any VAT Amount is paid by Buyer in respect of any supply made to it by Elan, and it subsequently transpires that such supply (or any part thereof) (the “ **Affected Item** ”) in relation to which such VAT Amount was paid by Buyer to Elan is not taxable at a positive rate (or the same positive rate), and, as a result, Buyer is required to repay an amount in respect of VAT that it has previously recovered from the relevant tax authority, Elan shall repay to Buyer an amount equal to the difference between the VAT. Amount actually paid and the amount of VAT actually chargeable on the Affected Item within fifteen (15) Business Days of Elan becoming aware of the error.
- 10.4 Where Buyer is required by the terms of this Agreement to reimburse Elan for any cost or expense, Buyer shall reimburse Elan for the full amount of such cost or expense, including any part of such amount as represents VAT, save to the extent that Elan obtains credit or repayment in respect of such VAT from a tax authority.
- 10.5 Where an amount payable by Buyer to Elan is to be determined or calculated by reference to any amount incurred or to be incurred by Elan, any part of such latter amount as represents VAT shall be included in such calculation or determination.

## 11. DURATION AND TERMINATION

- 11.1 This Agreement shall be deemed to have come into force on the Effective Date and will expire upon the date that is five (5) years from the Effective Date (the “ **Initial Term** ”); provided, however, that the term of this Agreement shall be extended automatically for additional two (2) year periods (each, a “ **Renewal Term** ”) unless sooner terminated by any party by notifying the other party at least twelve (12) months prior to the expiration of the Initial Term or any Renewal Term.
- 11.2 In addition to the rights of termination provided for elsewhere in this Agreement, either party will be entitled forthwith to terminate this Agreement by written notice to the other party if:

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

- 11.2.1 the other party commits any material breach of any of the provisions of this Agreement, and in the case of a breach capable of cure, fails to cure the same within sixty (60) days after receipt of a written notice giving full details of the breach and requiring it to be remedied (which period shall be thirty (30) days for any failure by Elan to timely deliver properly ordered Product); provided, that if the breaching party has proposed a course of action to cure the breach and is acting in good faith to cure same but has not cured the breach by the sixtieth (60<sup>th</sup>) (or, if applicable thirtieth (30th)) day, such period shall be extended by such period as is reasonably necessary to permit the breach to be cured, provided that such period shall not be extended by more than sixty (60) days unless otherwise agreed in writing by the parties; and, provided further, that in the event of a Serious Failure to Supply, Buyer may terminate the Agreement immediately thereafter, with no cure period being applicable;
  - 11.2.2 the other party goes into liquidation (except for the purposes of amalgamation or reconstruction and in such manner that the company resulting therefrom effectively agrees to be bound by or assume the obligations imposed on such other party under this Agreement);
  - 11.2.3 an encumbrancer takes possession or a receiver is appointed over any of the property or assets of the other party;
  - 11.2.4 any proceedings are filed or commenced by the other party under bankruptcy, insolvency or debtor relief laws or anything analogous to any of the foregoing occurs under the laws of any jurisdiction in relation to such other party; or
  - 11.2.5 all or substantially all of the assets of Elan are sold in one or a series of related transactions and this Agreement is not assumed by the purchaser of such assets (and Elan hereby agrees to notify Buyer as soon as is practicable, but in no event later than five (5) business days, after the consummation of such (or, as applicable, the last of such) transaction(s)).
- 11.3 For the purposes of Clause 11.2, a breach will be considered capable of cure if the party in breach can comply with the provision in question in all respects other than as to the time of performance.
- 11.4 The parties hereby acknowledge that Buyer may, at any time and at its sole expense, take such steps as are appropriate to manufacture the Products through itself or a third party as an alternate site of manufacture in the event of (a) a Serious Failure to Supply, or (b) Elan's receipt from Buyer of a notice of termination of this Agreement by Buyer pursuant to Clause 11.2. In such event, Elan shall use commercially reasonable efforts to cooperate in and provide assistance to Buyer in any technology transfer necessary to allow Buyer or a third party (an "**Alternate Manufacturer**") to manufacture the Products from and after the occurrence of any of the foregoing events, provided that such Alternate Manufacturer does not constitute a Technological Competitor. If Buyer notifies Elan of its intention to secure Product from an Alternate Manufacturer in compliance with this Clause 11.4, as promptly as is practicable Elan

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

shall grant to Buyer a royalty-free, fully paid-up licence (a “**Production Licence**”), with the right, if the Alternate Manufacturer is other than Buyer, to sublicense to such Alternate Manufacturer (other than any Technological Competitor), under all of its right, title and interest in all technical know-how and information related to the composition, production, packaging and quality control of the applicable Product (including, without limitation, practical performance advice, shop practice, specifications as to materials to be used and control methods related thereto), and access and a right of reference to relevant regulatory filings, which licence shall be made in a written agreement containing the provisions contained in Schedule 2 hereto, solely to procure the production of the Product (including securing required Regulatory Approvals and/or Facility Licenses in connection therewith) from an Alternate Manufacturer other than a Technological Competitor. The Production License will include an exclusive, perpetual, fully-paid-up, royalty free license for Buyer to use the Excluded Intellectual Property (as such term is defined in the Purchase Agreement) solely to the extent needed to make Products and improvements thereto and reformulations thereof (to the extent that any such improvements or reformulations are developed by the Buyer). The parties shall negotiate in good faith with respect to other provisions that will be applicable to any Production Licence.

- 11.5 Upon Elan’s receipt from Buyer of a notice of termination pursuant to Clause 20.2, Buyer and Elan shall enter into good faith negotiations to preserve continuity of supply of Product to Buyer, including the possibility of transfer of manufacture to Buyer or an Alternate Manufacturer.

## **12. CONSEQUENCES OF TERMINATION**

- 12.1 Upon termination of this Agreement, this Agreement shall, subject to (a) Clause 12.2, (b) the provisions of the Agreement which by their terms are reasonably intended to survive the termination of the Agreement and (c) the provisions of the Agreement that are required to survive in order for the parties to comply with Clause 12.2, automatically terminate forthwith and be of no further legal force or effect.

- 12.2 Upon expiration or termination of this Agreement:

- 12.2.1 any sums that were due from Buyer to Elan under this Agreement prior to the exercise of the right to terminate this Agreement, shall be paid in full, subject to setoffs for any amounts or credits owed to Buyer by Elan under this Agreement;
- 12.2.2 all representations and warranties contained in Clause 13 shall, insofar as appropriate, remain in full force and effect;
- 12.2.3 Subject to subclause 12.2.6, Buyer shall be permitted to cancel any outstanding purchase order with respect to which there is no work-in-process, with no payments owed to Elan with respect thereto;

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

- 12.2.4 Elan shall deliver to Buyer the Products requested in each written purchase order that is not cancelled pursuant to subclause 12.2.3;
  - 12.2.5 immediately upon delivery of Products pursuant to such written purchase orders, Buyer shall pay in full all sums due in relation to such delivery; and
  - 12.2.6 by Buyer, Buyer shall reimburse Elan for its costs for raw materials, intermediary products and components purchased in reliance on any Monthly Forecast Report, including but not limited to Elan's costs relating to disposal of such items, but not including costs that are cancellable or costs for such materials, products and components that are otherwise useable by Elan; provided that the provisions of this subclause 12.2.6 shall not apply in the event of an expiration of this Agreement or termination by Buyer pursuant to subclauses 11.2.1 or 11.2.5. Elan shall take commercially reasonable steps to mitigate any costs that Buyer should otherwise reimburse under this subclause 12.2.6.
- 12.3 Clauses 1, 7.3, 8, 9, 10 and 12 through 28 (inclusive) shall survive any expiration or termination of this Agreement.

### **13. WARRANTIES AND INDEMNITIES**

- 13.1 Each party represents and warrants to the other as of the Effective Date, that:
  - 13.1.1 it has the right, power and authority, and has taken all action necessary, to execute, deliver and exercise its rights, and perform its obligations, under this Agreement; and
  - 13.1.2 neither the execution of nor performance under this Agreement by it will result in a breach of any agreement or arrangement to which it is a party.
- 13.2 Elan represents and warrants to Buyer that, at the time of delivery pursuant to Clause 5.2, the Product delivered to Buyer under this Agreement: (i) will not be adulterated or misbranded under the Federal Food, Drug, and Cosmetic Act, as amended (the "FFDCA"); (ii) will fully conform to the Product Specifications; (iii) will have been manufactured, packaged, labeled, held, tested and shipped in accordance with the Product Specifications, cGMPs, all other applicable laws and regulations and requirements of all applicable Governmental Authorities and this Agreement; (iv) may be introduced into interstate commerce in the United States pursuant to the FFDCA; and (v) will have a remaining shelf life of not less than the maximum permitted shelf life for Finished Product under applicable law less six (6) months.
- 13.3 Elan further represents and warrants to Buyer that (i) neither it nor any of its Affiliates nor any member of their respective staffs that will be involved in Elan's

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

performance under this Agreement has been disqualified or debarred for any purpose by any Governmental or Regulatory Authority with jurisdiction over the granting of Regulatory Approvals or Facility Licenses, and (ii) to the Knowledge of Elan, the processes used to manufacture the Products do not presently and will not infringe, misappropriate or otherwise violate, as applicable, the intellectual property or proprietary rights of any person or entity.

- 13.4 Buyer represents and warrants to Elan that (i) provided the Products do not breach the representations and warranties of Elan in Clause 13.2, Buyer's sale (and other handling) of the Products will be in compliance with all applicable laws and regulations and requirements of all applicable Governmental Authorities, and (ii) the packaging and related artwork for the Products as approved by Buyer and provided to Elan will fully comply with all applicable laws and regulations and requirements of all applicable Governmental Authorities.
- 13.5 Buyer shall indemnify Elan and its directors, officers, employees, Affiliates, agents successors and assigns, and keep such persons indemnified, on demand, against each Loss which such persons incur to the extent such Loss arises out of any actual (or, in connection with a claim made by a third party, alleged):
- 13.5.1 breach by Buyer of any of its representations or warranties under this Clause 13 or any of its covenants, obligations or undertakings elsewhere in this Agreement; or
  - 13.5.2 claim (other than a Medical Claim) against such persons in relation to any Product sold in the Territory after the Effective Date.
  - 13.5.3 Notwithstanding the foregoing, Buyer shall not be required to indemnify Elan with respect to any Loss to the extent the same is covered by Elan's indemnification obligations in Clauses 13.6.1 and 13.6.2.
- 13.6 Elan shall indemnify Buyer and its directors, officers, employees, Affiliates, agents successors and assigns, and keep such persons or entities indemnified, on demand, against each Loss which such persons incur to the extent such Loss arises out of any actual (or, in connection with a claim made by a third party, alleged):
- 13.6.1 breach by Elan of any of its representations or warranties under this Clause 13 or any of its covenants, obligations or undertakings elsewhere in this Agreement; or
  - 13.6.2 Medical Claim against such persons in relation to any Product sold in the Territory after the Effective Date.

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

- 13.6.3 Notwithstanding the foregoing, Elan shall not be required to indemnify Buyer with respect to any Loss to the extent the same is covered by Buyer's indemnification obligations in Clauses 13.5.1 and 13.5.2.
- 13.7 A "**Medical Claim**" means a claim for personal injury (including death) and/or for costs of medical treatment to the extent caused by a Product that failed to conform with the Product Specifications at the time of dispatch from Elan's Facility. If the parties are unable to agree whether a claim constitutes a Medical Claim, the dispute shall be settled in the manner set forth in Clause 7.3.
- 13.8 If a party becomes aware of a matter which constitutes or which would or might give rise to an indemnity claim pursuant to Clause 13.5 or 13.6 (a "**Relevant Claim**"):
- 13.8.1 party shall immediately give notice to the other party of the matter and shall consult with such other party with respect to the matter;
- 13.8.2 the party claiming under an indemnity (the "**Beneficiary**") shall, and shall ensure that each of its Affiliates will, provide to the indemnifying party (the "**Covenantor**") and its advisers reasonable access to premises and personnel and to relevant assets, documents and records within the power or control of the Beneficiary (and its Affiliates) for the purposes of investigating the matter and enabling the Covenantor to take the action referred to in this Clause 13.8;
- 13.8.3 the Covenantor (at its cost) may take copies of the documents or records, and photograph the premises or assets, referred to in Clause 13.8.2;
- 13.8.4 the Beneficiary shall, and shall ensure that each of its Affiliates will:
- (a) take any action and institute any proceedings, and give any information and assistance, as the Covenantor may reasonably request to:
- (i) dispute, resist, appeal, compromise, defend, remedy or mitigate the matter; or
- (ii) enforce against a person (other than the Covenantor (or any of its Affiliates)) the rights of the Beneficiary (and any of its Affiliates) in relation to the matter; and
- (b) in connection with proceedings related to the matter (other than against the Covenantor (or its Affiliates)) use advisers nominated by the Covenantor and, if the Covenantor requests, allow the Covenantor the exclusive conduct of the proceedings;

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

and in each case on the basis that the Covenantor shall indemnify the Beneficiary, and keep the Beneficiary indemnified, on demand against all reasonable costs incurred as a result of a request or nomination by the Covenantor;

- 13.8.5 the Beneficiary shall not, and shall ensure that none of its Affiliates will, admit liability in respect of, or compromise or settle, the matter without the prior written consent of the Covenantor, which shall not be unreasonably withheld or delayed; and
  - 13.8.6 the Beneficiary shall take all reasonable action to mitigate any loss suffered by it (or any of its Affiliates) in respect of the matter.
- 13.9 Notwithstanding anything to the contrary contained herein, other than with respect to claims made by any third party, neither of Elan and Buyer shall be liable to the other (or any other person to be indemnified hereunder) by reason of any representation or warranty, condition or other term or any duty of common law, or under the express terms of this Agreement, for any loss of profit, loss of enterprise value, indirect, consequential, special or incidental loss or damage, and whether occasioned by the negligence of the respective parties, their employees or agents or otherwise.
- 13.10 Each of Elan and Buyer shall maintain their own comprehensive general liability insurance and shall note the interest of the other on such policies.

#### **14. RELATIONSHIP OF THE PARTIES**

- 14.1 Elan and Buyer shall for all purposes be independent contractors, and this Agreement and/or the performance of the obligations hereunder shall not create any relationship in which one party or its employees, agents or representatives, are to be employees, agents, partners, joint venturers or representatives of the other party. Consequently, neither party nor its employees, agents and representatives has any power or right to bind the other party, to settle any claim by or against such party, to give any warranty or make any claim or representation on behalf of such party or to subject such party to any obligation or liability of any kind, unless expressly authorised by such party in writing.

#### **15. CONFIDENTIALITY**

- 15.1 The parties agree that it will be necessary, from time to time, to disclose to each other information that is confidential and/or proprietary to the disclosing party and/or its Affiliates, including without limitation, inventions, trade secrets, specifications, designs, data, know-how and other proprietary information relating to the Products, processes, services and business of the disclosing party and/or its Affiliates. The foregoing, together with the existence, subject matter and terms of this Agreement, shall be referred to collectively as "**Confidential Information**".

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

- 15.2 Any Confidential Information disclosed by the disclosing party shall be used by the receiving party exclusively for the purposes of fulfilling the receiving party's obligations under this Agreement and for no other purpose.
- 15.3 Save as otherwise specifically provided herein, and subject to Clauses 16 and 17, each party shall disclose Confidential Information of the other party only to those employees, representatives, agents and consultants requiring knowledge thereof in connection with fulfilling such other party's obligations under this Agreement, and not to any other third party.
- 15.4 Each party further agrees to inform all such employees, representatives, agents and consultants of the terms and provisions of this Agreement relating to Confidential Information and their duties hereunder and to obtain their written agreement hereto (or to ensure that such persons or entities are bound by similar confidentiality obligations relating to Confidential Information that are at least as strict as those contained herein) as a condition of receiving Confidential Information.
- 15.5 Each party shall exercise the same standard of care as it would itself exercise in relation to its own confidential information (but in no event less than a reasonable standard of care) to protect and preserve the proprietary and confidential nature of the Confidential Information disclosed to it by the other party.
- 15.6 Upon termination or expiration of this Agreement, each party shall promptly, upon request of the other party, return (or if requested by the other party, destroy) all documents and any copies thereof containing Confidential Information belonging to, or disclosed by, such other party, save that it may retain one copy of the same solely for the purposes of ensuring compliance with this Agreement.
- 15.7 Notwithstanding anything to the contrary contained herein, Elan and Buyer shall be entitled to pass to regulatory authorities and other distributors, licensees and potential licensees of the Products outside of the Territory (and in addition, in the case of Buyer, inside the Territory), information in relation to:
  - 15.7.1 any material complaint about the safety, quality, packaging or effectiveness of a Product, including a claim for death or injury following administration of such Product (that is plausibly related to the administration of such Product); or
  - 15.7.2 any other matter in connection with a Product or arising out of this Agreement that must be reported to a Governmental Authority.

To the extent that such information is Confidential Information, the disclosing party shall so inform the recipients and use reasonable endeavours to ensure that they are bound by appropriate restrictions as to confidentiality.

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

- 15.8 Any breach of this Clause 15 by any person to whom Confidential Information has been disclosed by one of the parties is considered a breach by the party itself.
- 15.9 The obligations of confidentiality contained herein shall not apply to Confidential Information of a disclosing party that the receiving party can demonstrate:
  - 15.9.1 is in the public domain or made public through no breach of this Agreement by the receiving party;
  - 15.9.2 is independently developed by the receiving party without reference to Confidential Information disclosed hereunder, as evidenced by such party's records; or
  - 15.9.3 becomes available to a receiving party on a non-confidential basis, whether directly or indirectly, from a source other than the other party hereto, which source did not acquire this information on a confidential basis.
- 15.10 The provisions relating to confidentiality in this Clause 15 shall remain in effect during the term of this Agreement, and for a period of 7 years following the expiration or earlier termination of this Agreement.
- 15.11 The parties agree that the obligations of this Clause 15 are necessary and reasonable in order to protect the parties' respective businesses, and each party agrees that monetary damages may be inadequate to compensate a party for any breach by the other party of its covenants and agreements set forth herein. The parties agree that any such violation or threatened violation may cause irreparable injury to a party and that, in addition to any other remedies that may be available, in law and equity or otherwise, each party shall be entitled to seek injunctive relief against the threatened breach of the provisions of this Clause 15, a continuation of any such breach by the other party and specific performance and other equitable relief to redress such breach, together with damages and reasonable counsel fees and expenses to enforce its rights hereunder.

## **16. ANNOUNCEMENTS**

- 16.1 Subject to Clause 17, no announcement or public statement concerning the specific terms of this Agreement shall be made by or on behalf of any party hereto without the prior written approval of the other party (such approval not to be unreasonably withheld or delayed).

## **17. PERMITTED DISCLOSURES**

- 17.1 A party (the "**Disclosing Party**") will be entitled to make an announcement or public statement concerning the existence, subject matter or any term of this

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

Agreement, or to disclose Confidential Information that the Disclosing Party is required to make or disclose pursuant to:

- 17.1.1 a valid order of a court or Governmental Authority; or
- 17.1.2 any other requirement of law or any securities or stock exchange,

provided that if the Disclosing Party becomes legally required to make such announcement, public statement or disclosure hereunder, the Disclosing Party shall, to the extent practicable, give the other party prompt notice of such fact so as to enable the other party to seek a protective order or other appropriate remedy concerning any such announcement, public statement or disclosure. Notwithstanding the foregoing sentence, the Disclosing Party shall be entitled to make such announcement, public statement or disclosure regardless of whether the other party is in the process of seeking a protective order or other remedy, if the Disclosing Party believes it is required to do so pursuant to subclauses 17.1.1 or 17.1.2.

- 17.2 The Disclosing Party shall fully co-operate with the other party in connection with such other party's efforts to obtain any such order or other remedy.
- 17.3 If any such order or other remedy does not fully preclude the announcement, public statement or disclosure, the Disclosing Party shall make such announcement, public statement or disclosure only to the extent that the same is legally required.
- 17.4 Either party shall notify the other party of any request by a Governmental Authority for disclosure of any Confidential Information required in connection with a Regulatory Application, provided that such party shall not disclose the Confidential Information to such Governmental Authority without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed).
- 17.5 Notwithstanding Clause 15 and this Clause 17, each of the Parties shall be entitled to provide a copy of this Agreement to a potential assignee in connection with Clause 18, potential corporate partners, investors, persons having observer rights at its Board of Director meetings and its consultants; provided that, if such potential assignee, potential corporate partners, investors, board observers or consultants are not an Affiliate of the assignor, the proposed assignee has entered into a confidentiality agreement on terms no less strict than the terms of Clauses 15, 16 and 17.

## **18. ASSIGNMENT / SUB-CONTRACTING**

- 18.1 Either party may assign this Agreement to its Affiliates without the consent of the other party, provided that:

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

- 18.1.1 such assignment does not have any adverse tax consequences (which shall not include consequences of an administrative nature only) on the other party; and
  - 18.1.2 if the assignee ceases to be an Affiliate of the assignor, the assignor shall procure that this Agreement is re-assigned to the assignor or another Affiliate of the assignor.
- 18.2 Elan shall additionally be entitled to:
- 18.2.1 assign this Agreement to a purchaser of all or substantially all of the assets of its manufacturing facility in Athlone, Ireland without the consent of Buyer (provided that Elan must provide Buyer with written notice of such assignment in advance; and provided, further, that at the request of Buyer, Elan shall confer with Buyer and discuss in good faith any concerns raised by Buyer relating to such assignment), provided that the same does not have any adverse tax consequences (which shall not include consequences of an administrative nature only) on Buyer and provided that such purchaser agrees in writing to accept and perform all obligations of Elan under this Agreement; and/or
  - 18.2.2 delegate or subcontract the manufacture of the Products to such person(s) as it sees fit, provided that Elan has received the prior written consent of Buyer to such delegation or subcontracting, which consent shall not be unreasonably withheld or delayed.
- 18.3 Buyer shall additionally be entitled to delegate any of its obligations under this Agreement to such person(s) as it, in its reasonable discretion, selects, and Buyer may assign this Agreement to a third party without the consent of Elan to the extent that such third party is not a Technological Competitor or then in litigation with Elan or any of its Affiliates.
- 18.4 Except as otherwise permitted in the foregoing, this Agreement may not be assigned by either party without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed.
- 18.5 Any assignment or delegation of a party's rights or obligations under this Agreement shall not operate to reduce or limit the assigning party's liabilities and obligations to the other party under the terms of this Agreement, for which the assigning party shall remain responsible.

## **19. SEVERABILITY**

- 19.1 If any provision in this Agreement is deemed to be, or becomes invalid, illegal, void or unenforceable under applicable laws:

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

- 19.1.1 such provision will be deemed amended to conform to applicable laws so as to be valid and enforceable; or
- 19.1.2 if it cannot be so amended without materially altering the intention of the parties, it will be deleted, and the validity, legality and enforceability of the remaining provisions of this Agreement shall not be impaired or affected in any way.

## 20. FORCE MAJEURE

- 20.1 If a party (the “**Affected Party**”) is prevented or delayed from performing any of its obligations under this Agreement (through no fault of the Affected Party and other than a payment obligation) (an “**Affected Obligation**”) by a Force Majeure Event:
  - 20.1.1 the Affected Obligation shall be suspended while the Force Majeure Event continues to the extent that the Affected Party is prevented or delayed in performing the Affected Obligation by such Force Majeure Event, and no party shall be in breach of this Agreement, or otherwise liable, by reason of such suspension of such Affected Obligation;
  - 20.1.2 as soon as reasonably possible after the start of the Force Majeure Event, the Affected Party shall notify the other party in writing of the Force Majeure Event, the date on which the Force Majeure Event started and the effects of the Force Majeure Event on its ability to perform the Affected Obligation, and the parties shall meet as soon as is practicable to discuss the matter in good faith;
  - 20.1.3 the Affected Party shall make all commercially reasonable efforts to mitigate the effects of the Force Majeure Event on the performance of the Affected Obligation and to bring the Force Majeure Event to an end; and
  - 20.1.4 as soon as reasonably possible after the end of the Force Majeure Event, the Affected Party shall notify the other party in writing that the Force Majeure Event has ended and resume performance of the Affected Obligation.
- 20.2 Where the Force Majeure Event continues for more than three (3) months, the other party may terminate this Agreement by giving not less than five (5) Business Days’ written notice to the Affected Party.

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

## **21. AMENDMENTS**

No amendment, modification or addition hereto shall be effective or binding on any party hereto unless set forth in writing and executed by a duly authorised representative of each party.

## **22. WAIVER**

No waiver of any right under this Agreement shall be deemed effective unless contained in a written document signed by the party charged with such waiver, and no waiver of any breach or failure to perform shall be deemed to be a waiver of any future breach or failure to perform or of any other right arising under this Agreement.

## **23. ENTIRE AGREEMENT**

- 23.1 Each of the parties hereto hereby acknowledges that in entering into this Agreement it has not relied on any representation or warranty except as expressly set forth herein or in any document referred to herein.
- 23.2 This Agreement (together with Schedule 1 and all documents referred to herein) sets forth all of the agreements and understandings between the parties with respect to the subject matter hereof, and supersedes and terminates all prior agreements and understandings between the parties with respect to the subject matter hereof. There are no agreements or understandings with respect to the subject matter hereof, either oral or written, between the parties other than as set forth in this Agreement (together with Schedule 1 and all documents referred to herein).
- 23.3 Nothing in this Clause 23 shall exclude any liability which any party would otherwise have to the other party or any right which either of them may have to rescind this Agreement in respect of any statements made fraudulently by the other prior to the execution of this Agreement or any rights which either of them may have in respect of fraudulent concealment by the other.

## **24. GOVERNING LAW AND JURISDICTION**

- 24.1 This Agreement shall be governed by and construed in accordance with the laws of New York, excluding its conflict of laws rules.
- 24.2 For the purposes of this Agreement the parties submit to the exclusive jurisdiction of the courts of New York.

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

## 25. NOTICES

25.1 Any notice to be given under this Agreement shall be sent in writing in English by registered or recorded delivery post, internationally recognized overnight courier or fax to:

25.1.1 Elan at:

Address: Elan Pharma International Limited  
WIL House, Shannon Business Park  
Shannon  
County Clare  
Ireland  
Attention: Counsel  
Fax: +353 902 92427

with a courtesy copy (receipt of which shall not constitute, notice) to each of:

Address: Elan Pharma International Limited  
WIL House, Shannon Business Park  
Shannon  
County Clare  
Ireland  
Attention: Company Secretary  
Fax: +353 902 92427

and

Address: Elan Pharmaceuticals, Inc.  
800 Gateway Boulevard  
South San Francisco, CA 94080  
Attention: Vice President, Legal Affairs  
Fax: (650) 553-7165

25.1.2 Buyer at:

Address: Acorda Therapeutics  
15 Skyline Drive  
Hawthorne, NY 10532  
Attention: General Counsel  
Fax: (914) 347-4560

or to such other address(es) and fax numbers as may from time to time be notified by either party to the other in conformity herewith.

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

- 25.2 Any notice sent by mail shall be deemed to have been delivered seven (7) Business Days after dispatch or delivery to the relevant courier; any notice sent by internationally recognized overnight courier shall be deemed to have been delivered two (2) Business Days after dispatch or delivery to the relevant courier; and any notice sent by fax shall be deemed to have been delivered upon confirmation of receipt.

**26. FURTHER ASSURANCES**

At the request of either party, the other party shall (and shall use reasonable efforts to procure that any necessary third parties shall) execute such documents, and do all acts and things as may reasonably be required subsequent to the signing of this Agreement for assuring to or vesting in the requesting party the full benefit of the terms hereof.

**27. COUNTERPARTS**

This Agreement may be executed by facsimile and in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute this Agreement.

**28. SET-OFF**

Any payment due hereunder from either party may be set off against any payment owed hereunder to such party.

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

**IN WITNESS WHEREOF** the parties have executed this Agreement on the Effective Date.

**SIGNED**

---

for and on behalf of  
**ELAN PHARMA INTERNATIONAL LIMITED**  
Name: William F. Daniel  
Position: Director

**SIGNED**

---

for and on behalf of  
**ACORDA THERAPEUTICS, INC.**  
Name: Ron Cohen  
Position: President and CEO

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

## SCHEDULE 1

### PRODUCTS

Product	Strength (mg)	Bottle Size (capsules)	Price (per bottle)	Minimum Batch Size (number of capsules)
Zanaflex capsules (finished)	2	150	[***]	[***]
Zanaflex capsules (finished)	4	150	[***]	[***]
Zanaflex capsules (finished)	6	150	[***]	[***]

Product	Strength (mg)	Unit Size (capsules)	Price (per unit)	Minimum Batch Size (number of capsules)
Zanaflex capsules (bulk)			[***]	[***]

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

## SCHEDULE 2

### TERMS OF THE PRODUCTION LICENCE

#### 1. GRANT AND RECORDAL

- 1.1 Elan hereby grants to Buyer a royalty-free, fully paid-up licence (a “**Production License**”), with the right to sublicense to an Alternate Manufacturer (other than any Technological Competitor), under all of its right, title and interest in all technical know-how and information related to the composition, production, packaging and quality control of the applicable Product (including, without limitation, practical performance advice, shop practice, specifications as to materials to be used and control methods related thereto), and access and a right of reference to relevant regulatory filings, solely to procure the production of the Product (including securing required Regulatory Approvals and/or Facility Licenses in connection therewith) from an Alternate Manufacturer other than a Technological Competitor. This Production License includes an exclusive, perpetual, fully-paid-up, royalty-free license for Buyer to use the Excluded Intellectual Property (as such term is defined in the Purchase Agreement) solely to the extent needed to make Products and improvements thereto and reformulations thereof (to the extent that any such improvements or reformulations are developed by the Buyer).
- 1.2 If so requested by Buyer at any time during the continuation of this Production Licence, and at the sole expense of Buyer, Elan shall provide Buyer with all reasonable assistance and co-operation that Buyer may reasonably require to record Buyer’s interest under this Production Licence on any applicable intellectual register.

#### 2. COMPLIANCE AND INDEMNITY

- 2.1 Buyer shall comply, and shall be responsible for its sublicensees’ compliance, with all laws, rules, regulations, orders and codes of practice applicable to the manufacture, distribution, sale and other handling of the Products under this Production Licence, including, for the avoidance of doubt and not by way of limitation, compliance with all such laws, rules, regulations, orders and codes of practice requiring and regarding product recalls.
- 2.2 All liability of Elan to Buyer, its officers, directors, employees, agents, sublicensees or contractors for any product liability or personal injury claim (including death) or similar claim relating to the Products produced by Buyer or any person authorised by Buyer during the continuation of this Production Licence is hereby excluded to the fullest extent permitted by law. In any event, Elan shall not be liable to Buyer or its officers, directors, employees, agents, sublicensees or contractors for any indirect or consequential loss or damage

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

suffered by Buyer or any of such persons or entities for any such product liability, personal injury or similar claim.

- 2.3 Buyer shall indemnify Elan and its directors, officers, employees, Affiliates, agents successors and assigns, and keep such persons indemnified, on demand, against each Loss which such persons incur to the extent such Loss arises out of any actual (or, in connection with a claim made by a third party, alleged) breach by Buyer of any its obligations under this Production Licence or the use of the intellectual property licenced from Elan hereunder by Buyer or any person authorised by Buyer during the continuation of this Production Licence. Notwithstanding anything to the contrary contained herein, other than with respect to claims made by any third party, neither of Elan and Buyer shall be liable to the other (or any other person to be indemnified hereunder) by reason of any representation or warranty, condition or other term or any duty of common law, or under the express terms of this Agreement, for any loss of profit, loss of enterprise, value, indirect, consequential, special or incidental loss or damage, and whether occasioned by the negligence of the respective parties, their employees or agents or otherwise.
- 2.4 Buyer shall procure and maintain at its own cost and expense appropriate product liability insurance covering the Products for the full extent of the territory in which Buyer is selling or authorizing any other person to sell the Products in a reasonable amount and form.

### **3. WARRANTIES AND REPRESENTATIONS**

- 3.1 All warranties and representations, whether express or implied, are excluded from this Production Licence to the fullest extent permitted by law.

### **4. RELATIONSHIP OF ELAN AND BUYER**

- 4.1 Nothing in this Production Licence shall constitute or be deemed to constitute a partnership between Elan and Buyer or constitute Buyer as agent for Elan for any purpose, and Buyer shall have no right or authority to and shall not purport to perform any act enter into any agreement or arrangement, make any representation, give any warranty, incur any liability or assume any obligation (whether express or implied) of any kind for or on behalf of Elan or binding on Elan in any way.

### **5. GENERAL**

- 5.1 This Production Licence and the Supply Agreement constitute the entire agreement between Elan and Buyer in relation to the intellectual property licensed hereunder, and supersede any previous agreement between Elan and Buyer relating thereto.

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

- 5.2 No modification, alteration, variation or waiver of any of the provisions of this Production Licence shall be effective unless in writing and signed on behalf of each of Elan and Buyer.
- 5.3 The failure to exercise or delay in exercising a right or remedy provided by this Production Licence or by law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies. No single or partial exercise of a right or remedy provided by this Production Licence or by law prevents further exercise of the right or remedy or the exercise of another right or remedy.
- 5.4 The rights and remedies contained in this Production Licence are cumulative and not exclusive of rights or remedies provided by law.
- 5.5 If at any time any provision of this Production Licence is or becomes illegal, invalid or unenforceable in any respect under the laws of any jurisdiction, that shall not affect the legality, validity or enforceability in that jurisdiction or in any other jurisdiction of any other provision of this Production Licence.
- 5.6 Elan and Buyer are each entering into this Production Licence for their own benefit and not for the benefit of any other person other than any indemnitee or permitted sublicensee hereunder.
- 5.7 Except where this Production Licence or the Supply Agreement provides otherwise, Elan and Buyer shall bear its own costs relating to the negotiation, preparation, execution and implementation by it of this Production Licence.

## 6. INCORPORATION OF TERMS

- 6.1 Clauses 1 (*Interpretation*), 15-17 (*Confidentiality*), 20 (*Force Majeure*), 24 (*Governing Law and Jurisdiction*) and 25 (*Notices*) of the Supply Agreement will apply to this Production Licence.
- 6.2 In this Production Licence, the term “**Supply Agreement**” means the Zanaflex Supply Agreement between Elan Pharma International Limited and Acorda Therapeutics, Inc. dated July 21, 2004.
- 6.3 Capitalized terms used in herein and not otherwise defined in this Agreement shall have the meanings assigned to such terms in the Supply Agreement.

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

## **SCHEDULE 3**

### **TECHNOLOGICAL COMPETITORS**

[\*\*\*]

34

---

### **Exhibit 10.22**

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

### **ASSIGNMENT AND ASSUMPTION AGREEMENT**

This Assignment and Assumption Agreement (this “Agreement”) is entered into this 21st day of July 2004, by and among Acorda Therapeutics, Inc. (“Buyer”), Elan Pharmaceuticals, Inc. (together with its affiliates, “Elan”), on behalf of itself and its affiliates, and Novartis Pharma AG (together with its affiliates, “Novartis”), on behalf of itself and its affiliates.

WHEREAS, Buyer and Elan have entered into that certain Asset Purchase Agreement dated as of July 21, 2004 (the “Asset Purchase Agreement”) for the sale by Elan to Buyer of certain assets, including certain rights of Elan under that certain License Agreement (the “License Agreement”) dated April 17, as amended, between Athena Neurosciences, Inc., the predecessor to the interest of Elan in the License Agreement, and Sandoz Pharma Ltd., the predecessor to the interest of Novartis in the License Agreement;

WHEREAS, under the terms of the Asset Purchase Agreement, Elan has agreed to assign to Buyer certain rights of Elan, and Buyer has agreed to assume certain liabilities and obligations of Elan, under or pursuant to the License Agreement, and the parties desire to effect other arrangements regarding the terms of the License Agreement;

WHEREAS, Elan has previously assigned to Medeus UK Limited (“Medeus”) certain rights under or pursuant to the License Agreement, and Medeus agreed to assume certain liabilities and obligations of Elan under or pursuant to the License Agreement (collectively, the “Medeus Assignment”); and

WHEREAS, Novartis desires to consent to such assignment and assumption, and the parties hereto desire to effect such other arrangements, in each case on the terms and conditions described herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. For value received and effective as of, and simultaneously with, the closing of the transactions contemplated by the Asset Purchase Agreement (the “Closing”), Elan hereby assigns to Buyer all of Elan’s rights under or pursuant to the License Agreement relating to Products and Improvements in the Territory (such term to be used herein as defined in the Asset Purchase Agreement), and Buyer hereby assumes and agrees to satisfy, perform, pay, discharge and otherwise be responsible for all liabilities and obligations of Elan to be performed under or pursuant to the License Agreement following the Closing relating to Products and Improvements in the Territory, but expressly excluding any such liabilities or obligations as have resulted or may result from any breach or failure to perform by Elan prior to the Closing under or pursuant to the license Agreement. The parties intend that: (a) the foregoing assignment and assumption shall be effected upon the terms and conditions contained herein, (b) all of the terms and conditions of the License Agreement shall be incorporated by reference herein, subject to any modifications and agreements made herein, and (c) such modifications to have no effect on the rights and obligations of Novartis and Medeus resulting from the Medeus Assignment or the
-

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

rights and obligations of any other person or entity that is not a party hereto. Elan hereby represents and warrants to Buyer that neither Elan nor any of its Affiliates has granted rights under the License Agreement relating to Products in the Territory to Medeus or any other third party.

2. The parties further agree as follows:

- a. Notwithstanding anything to the contrary contained herein, Elan shall maintain all rights and perform all obligations under the License Agreement at all times up to and including the date of the Closing (the "Closing Date"). Further, it is understood and agreed that, notwithstanding the assignment and assumption to Buyer as of the Closing, from and after such Closing Date Elan shall maintain all rights necessary to enforce or perform under, and shall remain responsible for all obligations and liabilities under, the License Agreement with respect to events occurring or circumstances existing on or prior to such Closing Date. For the avoidance of doubt and without limiting the generality of the foregoing, Elan shall maintain all rights and remain responsible for all obligations and liabilities under the License Agreement with respect to Products sold by Elan (or its Affiliates, sublicensees and marketing, promotion or distribution partners) on or prior to the Closing Date, and Buyer shall have all rights and be responsible for all obligations and liabilities under the License Agreement with respect to Products sold by Buyer (or its Affiliates, sublicensees and marketing, promotion or distribution partners) on or after the Closing Date. Without limiting the generality of the foregoing, and notwithstanding anything to the contrary contained herein, Elan shall be responsible for and entitled to (i) the indemnification provided under Section 9 of the license Agreement (arising from events occurring or circumstances existing on or prior to the Closing Date) and (ii) the rights and obligations provided under the confidentiality provisions in Section 4 of the License Agreement.
- b. Any provisions of the License Agreement that (a) are not expressly assigned to or assumed by Buyer herein and (b) are necessary (as determined by Buyer) for the exercise of rights assigned to Buyer hereunder or the performance of obligations assumed by Buyer hereunder shall be deemed to have been assigned to or assumed by Buyer, as applicable, and to be in full force and effect, in each case to the extent necessary to exercise or enforce such rights or perform such obligations.
- c. The parties hereby acknowledge and agree that all references in the License Agreement to "Sandoz Pharma Ltd." or "Sandoz Pharma" shall be deemed to be references to Novartis.
- d. The parties hereby acknowledge and agree that in connection with the Closing and the assignment being made hereunder, Elan may transfer to Buyer all Know-How and other information and materials related to Products and/or

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

Improvements furnished to Elan by Novartis under Section 3.1 of the License Agreement or otherwise.

- e. Section 1.11 of the License Agreement shall be deleted and replaced in its entirety by the following:

“1.11 “Territory” means the United States of America, its territories and possessions and the Commonwealth of Puerto Rico.”
- f. The parties hereby acknowledge and agree that the five-year period beginning on the first commercial sale of a Product (as specified in Section 5.1.4 of the License Agreement) has elapsed, and that as such the royalty payable to Novartis relating to sales of Product by Buyer (or its affiliates or licensees) pursuant to Section 5.1.5 of the License Agreement shall be [\*\*\*] of Net Sales (for the avoidance of doubt, as such term is defined in the License Agreement as amended hereby) in the Territory of any formulation of Product, whether now existing or to be developed in the future, for the term of the License Agreement.
- g. The parties hereby acknowledge and agree that (i) Elan has developed a microparticulate capsule formulation of Product (the “MPC Formulation”), (ii) for the avoidance of doubt the term “Purchase Requirements” as used in the License Agreement does not apply to the supply by Novartis of the MPC Formulation, (iii) Elan shall have a worldwide, perpetual, royalty-free license, with the right to sublicense, to use all rights in technology (including without limitation the Compound and all Improvements) necessary to manufacture the MPC Formulation, to develop improvements to its processes and methods of manufacturing the MPC Formulation and to sell the MPC Formulation to Buyer, its sublicensees and affiliates, (iv) Elan shall have no liability or obligation, contractual or otherwise, to Novartis as a result of any past development, manufacture or testing of the MPC Formulation or the sale by Elan to Buyer of its inventory of MPC Formulation existing as of the Closing Date and (v) notwithstanding anything to the contrary contained in the License Agreement, Novartis shall not be entitled to any royalty or other compensation from Elan in connection with sales of the MPC Formulation by Elan to Buyer from and after the Closing Date; provided, however, the parties acknowledge and agree that the MPC Formulation constitutes an Improvement developed by Elan, and nothing in this subclause (g) or elsewhere in this Agreement is intended to diminish the rights of Novartis to such Improvement provided under Section 12 of the License Agreement or elsewhere.
- h. [\*\*\*]
- i. The parties hereby acknowledge and agree that Elan has fully complied with all of the obligations contained in Sections 2.2 and 7.1 of the License Agreement and, as a result, as of the Closing Date the provisions of Sections 2.2 and 7.1 of the

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

License Agreement granting to Novartis certain rights relating to the Product in the Territory have been fully satisfied and do not apply to Buyer.

- j. Section 7.6 and 7.7 of the License Agreement shall be deleted and replaced in its entirety by the following:

“7.6 Prior to the execution of the Supply Agreements, Novartis shall supply Zanaflex Tablets to Buyer and Compound to Elan at the following prices (the “Interim Supply Prices”):

Product	Price (US\$)
2 mg Zanaflex Tablet	[***]
4 mg Zanaflex Tablet	[***]
Compound	[***]

These Interim Supply Prices may be adjusted by Novartis before the Supply Agreements have been executed; provided that such adjusted Interim Supply Prices shall not be effective until Buyer (with respect to Zanaflex Tablets) or Elan (with respect to Compound) have been notified of such adjustments in writing; and, provided, further, that increases to such Interim Supply Prices shall be limited to the percentage increase in the Swiss consumer price index, as compared to the most recent price adjustment. The Supply Agreements shall stipulate price and price changes, if any, for the terms of the Supply Agreements.

- k. Article 8 is amended by the addition of the following Section 8.3:

“8.3 The provisions of Sections 8.1 and 8.2 shall not apply to any materials previously approved by Novartis that are changed solely to add the name of a sublicensee and/or delete the name of Licensee.”

- l. The parties hereby acknowledge and agree that the term of the License Agreement as determined pursuant to Section 14.1 shall expire on February 28, 2007.
- m. Any notices to be sent to Buyer pursuant to the notice provisions of the License Agreement shall be sent to Buyer as follows:

Acorda Therapeutics  
15 Skyline Drive  
Hawthorne, NY 10532  
Facsimile: 914-347-4560  
Attention: General Counsel; and

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

any notices to be sent to Novartis pursuant to the notice provisions of the License Agreement shall be sent to Novartis as follows:

Novartis Pharma AG  
Lichtstrasse 35  
4002 Basel  
Switzerland  
Attention: Manager, BD&L Mature Products  
Facsimile: 41 61 324 2322.

3. Each party hereto agrees, upon the reasonable request of any other party hereto, and at the expense of the requesting party, to make, execute and deliver any or all documents or instruments of any kind or character, and to perform all such other actions, that may be necessary or proper and reasonable to effectuate, confirm, perform or carry out the terms and provisions of this Agreement.

4. By its execution below, Novartis consents to the assignment to Buyer of the rights and the assumption by Buyer of the related obligations and liabilities under the License Agreement, as set forth in Section 1 above, and as provided in Section 18 of the License Agreement, and agrees to the other terms and conditions contained in this Agreement.

5. Capitalized terms used herein and not otherwise defined in this Agreement shall have the meanings assigned to such terms in the License Agreement, as amended herein.

6. This Agreement shall in all respects be construed in accordance with and governed by the laws of the State of New York without giving effect to its conflicts-of-laws principles.

7. This Agreement may be executed in any number of counterparts and by facsimile and by different parties hereto in separate counterparts, and each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same Agreement.

[SIGNATURE PAGE TO FOLLOW]

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above.

ACORDA THERAPEUTICS, INC. (on behalf of itself and its affiliates)

By:

Name:

Title:

ELAN PHARMACEUTICALS, INC. (on behalf of itself and its affiliates)

By:

Name:

Title:

NOVARTIS PHARMA AG (on behalf of itself and its affiliates)

By: /s/

Name: Peter B. Hewes

Title: Mature Products BU

WSJ-210.211

Tel. 47225

By: /s/

Name: Sheyenne Scriven-Jin

Title: Senior Legal Counsel

Transplantation and

Mature Products

---

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above.

ACORDA THERAPEUTICS, INC. (on behalf of itself and its affiliates)

By:

Name:

Title:

ELAN PHARMACEUTICALS, INC. (on behalf of itself and its affiliates)

By: /s/

Name: Jack Laflin

Title: Executive Vice President,  
Global Core Services

NOVARTIS PHARMA AG (on behalf of itself and its affiliates)

By:

Name:

Title:

---

**Exhibit 10.23**

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

**CONFIDENTIAL**

**LICENSE AGREEMENT**

THIS LICENSE AGREEMENT (this "Agreement"), made the 17th day of April, 1991 by and between SANDOZ PHARMA LTD., a Swiss corporation having its principal place of business at Lichtstrasse 35, CH-4002 Basle, Switzerland ("Sandoz Pharma") and ATHENA NEUROSCIENCES, INC. a Delaware corporation having its principal place of business at 800F Gateway Boulevard, South San Francisco, California ("Licensee"),

**WITNESSETH:**

Whereas Sandoz Pharma has developed a substance called Tizanidine, useful in the treatment of spasticity and/or spastic diseases and owns and/or controls certain Know-How (as hereinafter defined) and patent rights relating to Tizanidine;

Whereas Sandoz Pharma has certain processes, skills and techniques for galenical formulations containing Tizanidine;

Whereas Licensee desires to acquire from Sandoz Pharma a license to sell Tizanidine and certain other rights on the terms and conditions herein set forth;

Whereas Licensee desires to purchase from Sandoz Pharma finished pharmaceutical formulations containing Tizanidine for sale in the Territory; and

Whereas Licensee desires to clinically develop and market in the Territory finished pharmaceutical formulations containing Tizanidine as the sole active ingredient,

**Now, Therefore ,** In consideration of the premises and the mutual covenants herein contained, it is mutually agreed as follows:

**1. Definitions.**

1.1     **"Affiliates"** means any corporation of which a corporation named herein owns, directly or indirectly, fifty percent (50%) or more of the outstanding stock, or any corporation, partnership or other entity over which such corporation named herein, directly or indirectly, exercises effective control, or any parent corporation, partnership or other entity



Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

which owns, directly or indirectly, fifty percent (50%) or more of the outstanding stock of a party hereto, or, directly or indirectly, controls a party hereto, and any corporation, partnership or other entity, other than a corporation named herein, which, directly or indirectly, is controlled by such parent corporation or other entity or of which such parent corporation or other entity owns, directly or indirectly, fifty percent (50%) or more of the outstanding stock.

- 1.2        "**Compound**" means [\*\*\*] the specifications of which are defined in Schedule I to this Agreement.
- 1.3        "**FDA**" means the United States Food and Drug Administration or any successor thereof.
- 1.4        "**Improvements**" means inventions and discoveries related specifically to Compound or Product, including, but not limited to: new/additional indications other than spasticity, dosage forms, formulations, delivery systems, process improvements, whether or not patentable, developed or acquired by a party and/or its Affiliates during the term of this Agreement.
- 1.5        "**IND**" means Investigational New Drug.
- 1.6        "**Know-How**" means all data, instructions, processes, formulae, expert opinions and information not generally known and relating to the manufacture, use and/or sale of the Compound or Product currently in the possession of, or developed during the term hereof, by either party or its Affiliates pursuant to this Agreement. Know-How shall include, without limitation, all biological, chemical, pharmacological, toxicological, pharmaceutical, physical and analytical, safety, quality control, manufacturing and clinical data and information relating to the use and/or sale of the Compound or Product.
- 1.7        "**NDA**" means a New Drug Application as required pursuant to the Code of federal regulations to be filed with the FDA.
- 1.8        "**Net Sales**" means the gross amount invoiced on sales of Product by Licensee, its Affiliates and sublicensees to independent, third party customers in bona fide, arms-length

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

transactions less [\*\*\*] for (i) quantity and/or cash discounts actually allowed or taken; (ii) amounts actually repaid or credited by reasons of rejections or return of Product (e.g., recalls); (iii) freight, postage and insurance costs paid by Licensee or its sublicensees for transporting Product from its warehouse to its customers; and (iv) custom duties and sales taxes directly related to the sale.

1.9       **“Product”** means any finished oral pharmaceutical formulation containing Compound as an active therapeutic ingredient.

1.10      **“Purchase Requirements”** means such quantities of Product in form of bulk tablets as Licensee its Affiliates and its sublicensees have committed for a particular quarter in accordance with Section 7.2.

1.11      **“Territory”** means the United States of America, its territories and possessions (including Puerto Rico) and Canada.

2.        License.

2.1       Sandoz Pharma hereby grants to Licensee and Licensee hereby accepts an exclusive license to develop, use and sell Product and Improvements in the Territory in accordance with the terms and conditions set forth in this Agreement. Licensee is entitled to grant sublicenses which right shall only apply after an NDA has been filed.

Unless otherwise directed by Sandoz Pharma, the reference “under license from Sandoz Pharma Ltd.” or a similar reference mutually agreed upon shall be included on Product labels and promotional materials.

2.2       Licensee shall bring Product to market through a thorough and diligent program for exploitation of the right and license granted in this Agreement and to market Product in the Territory all in accord with the efforts customarily given to its other products.

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

3. Know-How Transfer and Product Development.

3.1 Sandoz Pharma shall promptly following execution of this Agreement furnish Licensee with (i) the Know-How except such Know-How which is or shall be contained in the Drug Master File (DMF); (ii) a letter to the FDA transferring to Licensee sponsorship of all Sandoz Pharma and/or its Affiliates' IND applications covering Product; and (iii) the complete file for Product (currently in possession of Sandoz Canada).

3.2 Sandoz Pharma shall conduct all activities related to pharmaceutical, physical and analytical studies, provide a DMF and the chemistry, manufacturing and controls section of the to publish such information. To the extent that Licensee can justify its inclusion, Licensee shall provide appropriate credits identifying Sandoz Pharma and/or its Affiliates in scientific or clinical publications covering Compound or Product.

3.7 Sandoz Pharma and Licensee shall meet at mutually agreed appropriate times at which, the progress of the Licensee's development program will be discussed and reviewed. Licensee shall have sole control over all development activities but Sandoz Pharma shall be given the opportunity to review and comment on Licensee development plans, any significant revisions thereof and protocols for the conduct of clinical studies.

4. Secrecy.

4.1 Each party shall use all reasonable efforts to prevent the disclosure of any Know-How, Improvements or any information disclosed to it by the other party under this Agreement without the other party's prior written consent. Neither party shall use such information for its own benefit or the benefits of third parties except for the purpose of performing its rights and obligations under this Agreement.

4.2 This restriction shall not apply to any information which the disclosing or using party can prove:

- (i) at the time of use is in the public domain without fault of the disclosing or using party;

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

(ii) was in its or its Affiliates possession at the time of receipt and was not acquired, directly or indirectly, from the other party;

(iii) was obtained from a third party without restriction as to use or disclosure, provided, however, that such information was not obtained by said third party, directly or indirectly, from the disclosing or using party;

(iv) has been developed independently of information received from the other party.

4.3 Nothing in this Section 4 shall prevent the disclosure of information (i) to those proper governmental agencies or others to the extent required by law and/or (ii) to those permitted sublicensees, consultants and others who have signed an agreement to keep the information confidential.

4.4 The obligation in this Section 4 shall survive the Agreement for ten (10) years as and from the effective date of termination or expiration of the entire Agreement.

5. License Fees and Other Payments.

5.1 In consideration of the rights and services granted to Licensee by Sandoz Pharma under this Agreement Licensee shall pay to Sandoz Pharma the following amounts at the times indicated below:

5.1.1 Upon execution of this Agreement, [\*\*\*].

5.1.2 On the second anniversary of the date of execution of this Agreement, [\*\*\*].

5.1.3 On the fifth anniversary of the date of execution of this Agreement, if the NDA is not approved by the FDA at such time without fault of Sandoz Pharma [\*\*\*]. "Fault of Sandoz Pharma" includes, without limitation, failure of Sandoz Pharma to timely provide an approvable DMF and chemistry, manufacturing and control sections for the IND and NDA.

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

5.1.4 During the period beginning with the first commercial sale of a Product, a royalty of [\*\*\*] during the first year of commercial sale, of [\*\*\*], during the second year of commercial sale and of [\*\*\*] during the period beginning in the third year of commercial sale and ending five years following NDA-approval shall be payable to Sandoz Pharma on Net Sales of Product.

5.1.5 After such five-year period a royalty of [\*\*\*] shall be payable to Sandoz Pharma on Net Sales of Product for the term of this Agreement.

5.2 All monies paid by Licensee pursuant to this Agreement are non-refundable and non-creditable against future royalties.

6. Royalties and Supply Price.

6.1 Licensee shall furnish to Sandoz Pharma within ninety (90) days after the end of each calendar quarter in which royalties are payable hereunder true and accurate reports of its Affiliates and sublicensees Net Sales and the calculation of royalties payable thereon. Licensee shall simultaneously pay to Sandoz Pharma a sum equal to the aggregate of all royalties due for such period. Licensee shall furnish Sandoz Pharma with copies of all official receipts for taxes which result in a reduction in royalty payments to Sandoz Pharma and which are directly imposed and with reference to particular sales of Products. Licensee agrees to reasonably assist Sandoz Pharma in claiming refunds for such taxes at Sandoz Pharma's request.

6.2 Licensee, its Affiliates and its sublicensees shall pay Sandoz Pharma Supply Prices (as defined in Section 7.7. below) net sixty (60) days from date of invoice and on such other reasonable terms and conditions as Sandoz Pharma ordinarily requires.

6.3 Licensee shall keep accurate records in sufficient detail to enable the royalties payable hereunder to be determined. Sandoz Pharma may, at its expense, designate a suitably qualified independent accountant, reasonably acceptable to Licensee, to review during ordinary business hours, such part of the records of Licensee its Affiliates and/or sublicensees as may be necessary to determine, in respect of any calendar quarter, the accuracy of any report and/or payment made under this Agreement. This right of review shall terminate three (3) years

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

after Sandoz Pharma's receipt of Licensee's respective quarterly account. Said accountant shall not disclose to Sandoz Pharma any information other than that relating to the accuracy of the reports and payments hereunder.

6.4 All payments, required to be made by Licensee hereunder shall be paid in Swiss Francs to Sandoz Pharma's account at Swiss Bank Corporation, Basle, Switzerland, Attention: Royalty Accountant, or such other place as Sandoz Pharma may reasonably designate. The rate of exchange to be used for converting into Swiss Francs shall be the exchange rate at the same major Swiss Bank on the last business day of the calendar quarter to which the payment relates.

6.5 Payments due and unpaid under this Agreement shall bear interest from the date payment is due at an interest rate of [\*\*\*].

7. Good Faith Efforts and Ordering Procedure.

7.1 Should Licensee fail to comply with its obligations set forth in Section 2.2, Sandoz Pharma's sole remedy, after ninety (90) days written notice to Licensee, should Licensee fail to comply with such obligations, shall be to convert the exclusive license granted according to Section 2.1 into a non-exclusive license. Licensee shall entitle Sandoz Pharma, its Affiliates or any licensee designated by Sandoz Pharma to get access to the registration of the Product and the respective documentation including the right to refer to such registration and shall provide Sandoz Pharma, its Affiliates and licensees reasonable assistance to enable Sandoz Pharma, its Affiliates and licensees to sell Product in the Territory. Such non-exclusive license shall also result if Licensee engages in marketing, without the prior written consent of Sandoz, which shall not unreasonably be withheld, a product that materially and adversely affects the sales and market share of Product.

7.2 Quarterly, Licensee, its Affiliates and its sublicensees shall provide Sandoz Pharma with a written forecast of their respective estimated Purchase Requirements for each quarter in the ensuing twenty-four (24) months period beginning three (3) months in advance. Each first quarter projection in said twenty-four (24) month forecast shall be that quarter's Purchase Requirement, a binding commitment on both parties.

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

7.3 Sandoz Pharma will supply free of charge to Licensee all requirements of Product and placebo formulations for clinical trials necessary for FDA registration in dosage form meeting U.S. regulatory requirements and manufactured at a site meeting U.S. FDA Good Manufacturing Practice.

7.4 Sandoz Pharma will supply and Licensee and its sublicensees shall purchase all Purchase Requirements in final dosage form meeting U.S. regulatory requirements and manufactured at a site meeting U.S. FDA and Canada Good Manufacturing Practice. Notwithstanding the foregoing, Sandoz Pharma shall not be liable to supply that portion of the Purchase Requirement that exceeds the most recent forecast of that quarter's estimated Purchase Requirement by more than thirty percent (30%).

7.5 Sandoz Pharma warrants that it will treat Licensee in the same manner as it treats Sandoz Affiliates in the supply of Product and, in addition, Sandoz Pharma warrants to maintain in reserve a supply of Product exclusively for Licensee in the Purchase Requirement quantities and dosage form forecast by Licensee, its Affiliates and sublicensees for the two quarters following the quarter for which the last supply shipment has been sent. Such reserve shall be maintained in a location other than a Product manufacturing facility.

7.6 Licensee shall set a reference price (the "Reference Price") in Swiss Francs not later than twelve (12) months before the anticipated date of market introduction or March 31, 1994, whichever is earlier, and as Licensee desires from time to time thereafter, provided, however, that the Reference Price may not be less than the average of Sandoz Pharma's ex-factory prices to wholesalers for equivalent mg-dosages and presentations of Product in Switzerland, Germany, Denmark and the Netherlands or such other countries as the parties mutually agree.

7.7 Licensee and its sublicensees shall pay to Sandoz Pharma a supply price ("Supply Price") for bulk tablets F.O.B. Basle of:

7.7.1 [\*\*\*] of the Adjusted Reference Price, which shall be the Reference Price [\*\*\*] deductible for the cost items (i)-(iv) listed in paragraph 1.8, of the

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

package type having the highest share in turnover for all Product in normal tablet formulation delivered;

7.7.2     [\*\*\*] of the Adjusted Reference Price of the package type having the highest share in turnover for all Product in modified release formulation delivered.

8.     Package and Promotion Material.

8.1     Licensee shall submit to Sandoz Pharma for approval all labels and package inserts or their equivalent (e.g., Product descriptions in reference books), incorporating or describing Product and shall use only such labels and package inserts or their equivalent as are first approved in writing by Sandoz Pharma. Sandoz Pharma shall not unreasonably withhold such approval.

8.2     All advertising, promotional literature, labels, package inserts, etc. incorporating or describing Product shall be sent to Sandoz Pharma which shall have fourteen (14) days following receipt within which to comment in writing. If Licensee does not receive such a comment within fourteen (14) days of Sandoz Pharma's receipt, Licensee shall be free to use such written material. Any reasonable objection by Sandoz Pharma as to any item of such written material shall cause the parties to determine a mutually acceptable way to resolve Sandoz Pharma's objection.

9.     Liability and Indemnification.

9.1     Licensee shall indemnify and hold Sandoz Pharma and its Affiliates harmless from and against any and all liabilities, claims, damages, losses, costs or expenses (including reasonable attorneys' fees) incurred by or rendered against Sandoz Pharma and its Affiliates which arise out of Licensee's, its Affiliates' or sublicensee's packaging, testing, use, labeling, storage, handling, sale, distribution and/or promotion of Product. Such indemnification shall not apply to the extent that they result from the negligence, gross negligence, recklessness or willful misconduct of Sandoz Pharma, its Affiliates, its contractors, its suppliers or its other licensees. To the extent such liabilities, claims, damages, losses, costs or expenses result from the negligence, gross negligence, recklessness or willful misconduct of Sandoz Pharma, its

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

Affiliates, its contractors, its suppliers or its other licensees, Sandoz Pharma shall indemnify, protect and hold harmless Licensee against all such liabilities, claims, damages, losses, costs or expenses.

9.2 Sandoz Pharma shall indemnify and hold Licensee harmless from and against any and all liabilities, claims, damages, losses, costs or expenses (including reasonable attorneys' fees) incurred by or rendered against Licensee which arise out of Sandoz Pharma, its affiliates, its contractors, its suppliers or its other licensee's design, development, handling, storage, distribution, marketing or manufacturing Product. Such indemnification shall not apply to the extent that they result from the negligence, gross negligence, recklessness or willful misconduct of Licensee, its Affiliates and/or sublicensees. To the extent such liabilities, claims, damages, losses, costs or expenses result from the negligence, gross negligence, recklessness or willful misconduct of Licensee its Affiliates and/or sublicensees, Licensee shall indemnify, protect and hold harmless Sandoz Pharma against all such liabilities, claims, damages, losses, costs or expenses.

9.3 Sandoz Pharma shall promptly notify Licensee of any claim or suit brought against Sandoz Pharma and shall permit Licensee, at Licensee's cost and expense, to handle and control such claim or suit. Sandoz Pharma shall have the right to participate in any defense to the extent that in its judgment, Sandoz Pharma may be prejudiced thereby. In any claims or suit in which Sandoz Pharma seeks indemnification by Licensee, Sandoz Pharma shall not settle, offer to settle or admit liability or damages in any such claim or suit without the consent of Licensee.

9.4 Should Licensee seek indemnification from Sandoz Pharma, Section 9.3 shall apply reciprocally.

9.5 Licensee shall provide evidence of insurance coverage sufficient to fulfill Licensee's obligations under Section 9.1 provided such insurance is customarily available at prices which are common for such kind of products in the Territory.

9.6 The obligations in this Section 9 shall survive termination of this Agreement.

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

10. Force Majeure.

Neither party shall be responsible to the other for any failure or delay in performing any of its obligations under this Agreement or for other non-performance hereof provided that such delay or non-performance is occasioned by a cause beyond the reasonable control and without fault or negligence of such party, including, but not limited to fire, flood, explosion, discontinuity in the supply of power, court order or governmental interference or act of God, and provided that such party will immediately inform the other party and that it will entirely perform its obligations immediately after the relevant cause has ceased its effect.

11. Trademark.

11.1 Licensee shall employ a trademark of its choice in the Territory in connection with the sale of Product. Licensee shall keep Sandoz Pharma currently advised of the trademark used by it in connection with the sale of Product in the Territory.

11.2 Licensee shall not register and/or employ any trademark or trade name which is a colorable imitation or confusingly similar to a trademark of Sandoz Pharma.

12. Improvements.

12.1 Improvements made by either party and/or its Affiliates or sublicensees under this Agreement with respect to Product shall be the property of the party making same. Both parties will cooperate as reasonably necessary to perfect title to such Improvements in the name of the party entitled to same. Each party shall promptly disclose to the other party the general nature of any Improvements made by it its Affiliates and/or sublicensees along with sufficient detail to enable the other to reach a decision as to whether it desires to commercially develop same. To the extent Sandoz Pharma is legally free to do, Licensee shall be automatically, nonexclusively licensed in the Territory to use pursuant to the terms of this Agreement any Improvements made by Sandoz Pharma hereunder for use only with products containing Compound. To the extent Licensee is legally free to do, Sandoz Pharma shall be automatically, non-exclusively licensed free of charge to use and sublicense outside the Territory or in the Territory pursuant to paragraph 7.1 any Improvements made by Licensee its Affiliates and/or sublicensees hereunder for use only with products containing Compound.

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

12.2 After expiration of this Agreement, either party shall be entitled to continue to use and/or develop Improvements made by the other party during the term of this Agreement for use only with products containing Compound. The parties shall negotiate in good faith appropriate consideration for such further use, reflecting the investing party's contribution and the value of such Improvement.

12.3 Sandoz Pharma shall be entitled to terminate conveyance of Improvements to Licensee should Licensee engage in marketing a product that materially and adversely affects the sales and market share of Product.

13. Drug Monitoring.

13.1 Each party hereto agrees to report promptly to the other party, and to have their respective Affiliates and sublicensees so report, any information concerning any serious and/or unexpected side effect, injury, toxicity or sensitivity reaction or any unexpected incidence or severity thereof associated with clinical uses, studies, investigations or tests, whether or not determined to be attributable to Product. "Serious" as used in this paragraph refers to experiences which are life threatening, require hospitalization, prolong existing hospitalization, require prescription drug therapy or are due to an overdose. "Unexpected" as used in this paragraph refers to conditions or developments not previously submitted to governmental agencies or encountered during clinical studies of Product, and conditions or developments occurring at a rate higher than shown by information previously submitted to governmental agencies or encountered during clinical studies. Upon receipt or any such information by either party hereto, both parties shall promptly consult each other and use their best efforts to arrive at a mutually acceptable procedure for taking such possible actions as appropriate or required under the circumstances; provided, however, that nothing contained herein shall be construed as restricting the right of either party to make a report or submission to a governmental agency or to take any other action that it reasonably deems to be appropriate or required by applicable law or regulation including the right of Sandoz Pharma to recall or withdraw Product from marketing and selling in the Territory.

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

13.2 The obligation in this Section 13 shall survive termination of this Agreement.

14. Term and Termination.

14.1 This Agreement shall become effective upon execution. Unless otherwise agreed, this Agreement will expire on the 10th anniversary of first commercial sale by Licensee, its Affiliates or sublicensees of a Product licensed by Licensee hereunder.

14.2 No later than one (1) year prior to termination of this Agreement, the parties shall negotiate in good faith for the terms of a new agreement for the continued and uninterrupted supply of Product for Licensee and/or its sublicensees. After expiration of this Agreement, Licensee shall have a paid-up non-exclusive license to use and sell Product in the Territory and in the event Sandoz Pharma is unable to supply Product to make or have made Product in the Territory.

14.2.1 Except as provided in Section 7.1, either party may terminate this Agreement at its option if the other party should breach any of the material terms of this Agreement and such breach has not been rectified or at least has begun to be rectified within sixty (60) days after written notice of such breach by the other party and thereafter the party in breach has not proceeded diligently to rectify such breach within a reasonable time, provided however that any such termination shall not release either party from any obligations hereunder incurred prior hereto. Licensee's right to terminate this Agreement shall also apply should Licensee successfully challenge the confidentiality of the Know-How of Sandoz Pharma and/or its Affiliates covered by this Agreement.

14.2.2 Should Licensee become insolvent, make an assignment for the benefit of its creditors or proceedings in voluntary or involuntary bankruptcy shall be instituted on behalf of or against Licensee and Licensee fails to aggressively defend such involuntary bankruptcy proceeding within 90 days or shall Licensee be dissolved, wound up or be confiscated, sequestered or in any other way be transferred into state ownership, or if a receiver or trustee of Licensee's property shall be appointed, this Agreement shall

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

be subject to immediate termination by Sandoz Pharma upon service of written notice to such effect upon Licensee.

14.3 In the event this Agreement is terminated, Licensee shall promptly make an accounting to Sandoz Pharma of the inventory of the Product it has on hand as of the date of such termination. Licensee shall have the right to sell its stock of Product for a period of six months after said termination, it being understood that the Net Sales thereof shall be subject to the royalty rate as set forth in Section 5, provided, however, that Sandoz Pharma or a third party designated by Sandoz Pharma shall have the right to repurchase the stock of Products at Licensee's wholesale price.

14.4 Upon termination of this Agreement, all licenses and rights granted hereunder shall revert to the granting party and all documents containing Know-how shall be returned to the granting party upon its request.

14.5 Upon termination of this Agreement by Sandoz Pharma, or Licensee according to Article 14.2.2. Licensee will reassign the registration of Product to Sandoz Pharma free of charge and shall return all confidential information and documents containing Know-how, except that one copy of each document may be retained in the Licensee's legal files for record purposes. In addition, Licensee shall grant to Sandoz Pharma under reasonable terms to be negotiated which recognize the future value of the promotion and marketing investment made by Licensee and its sublicensees a license regarding the trademark used by Licensee for the sale of Product.

14.6 Upon any termination of this Agreement, each provision which is specified to continue beyond such termination shall continue in force and effect to the extent necessary to effectuate its purpose.

## 15. Validity.

Should one or several provisions of the Agreement be or become invalid, then the parties hereto shall substitute such invalid provisions by valid ones, which in their economic effect come so close to the invalid provisions that it can be reasonably assumed that the parties would have

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

contracted this Agreement with those new provisions. In case such provisions cannot be found, the invalidity of one or several provisions of the Agreement shall not affect the validity of the Agreement as a whole, unless the invalid provisions are of such essential importance for this Agreement that it is to be reasonably assumed that the parties would not have contracted this Agreement without the invalid provisions.

16. Applicable Law.

This Agreement shall be construed in accordance with the substantive laws of New Jersey.

17. Arbitration.

17.1 All disputes arising in connection with the present Agreement shall be settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce, Paris, France (ICC) by three arbitrators appointed in accordance with the Rules and the decisions of the arbitrators shall finally bind both parties hereto. Such arbitration shall take place in London, England, in the English language.

17.2 In any arbitration pursuant to this Agreement, the award or decision shall be rendered by a majority of the members of the panel provided for herein. The chairman shall fix a time and place in London, England within thirty (30) days of his appointment for the purpose of hearing evidence and representations of the parties and shall preside over the arbitration and determine all questions of procedure not provided for herein in accordance with the ICC regulations. After hearing any evidence and representations that each party may submit, the arbitrators shall make a substantiated award and reduce the same to writing and deliver one (1) copy thereof to each party within thirty (30) days after the hearing.

17.3 Sections 16 and 17 shall also survive termination of this Agreement.

18. Assignment.

This Agreement and the licenses granted herein shall not be assignable by either party hereto, except to a successor of all or substantially all of its pharmaceutical business, without the

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

consent in writing first obtained from the other party. Such non-authorized assignment shall be null and void. A merger, acquisition or sale of all or substantially all of the assets of a party to this agreement shall not be deemed to be an assignment requiring the consent of the other party hereto.

19.       Miscellaneous.

19.1       Notice. Any notice required or permitted to be given under this Agreement shall be deemed sufficiently given, if sent to the respective party, by facsimile transmission confirmed by certified or registered mail or by an internationally recognized overnight delivery service, to be notified at its address shown at the beginning of this Agreement or at such other address as may be furnished in writing to the notifying party. Time of notice or other communication shall be deemed to be the date of receipt.

19.2       Entire Agreement. This Agreement contains the entire understanding of the parties with respect to the subject matter hereof. No amendment or alteration of this Agreement shall be valid unless agreed upon by both parties in writing. The Schedules to this Agreement shall be considered an integral part thereof.

19.3       Waiver. The waiver by either party hereto of any right hereunder or the failure to perform or of a breach by the other party shall not be deemed a waiver of any other right hereunder or of any other breach or failure by said other party whether of a similar nature or otherwise.

19.4       Obligations. Termination of this Agreement shall not affect obligations accrued prior to termination.

19.5       Performance by Affiliates. Any party hereto may satisfy any of its obligations hereunder through any of its Affiliates, provided, however, that each party guarantees the performance at all times of any of such party's obligations so delegated pursuant to this section.

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth above.

ATHENA NEUROSCIENCES

By: \_\_\_\_\_ /s/

Title: Executive Vice President, Research

SANDOZ PHARMA LTD.

By: /s/ /s/  
Dr. P. Wäger Dr. R. Tschannen

Title: Head of Manager of Licensing  
Product Policy

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

Schedule I

to the Agreement by and between SANDOZ PHARMA and LICENSEE of

Description of Substance

[\*\*\*]

Basel, April 12, 1991

SANDOZ PHARMA LTD.

/s/

South San Francisco, April 17, 1991

ATHENA NEUROSCIENCES, INC.

/s/

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

**A d d e n d u m**

to the License Agreement, dated April 7th, 1991

between

**Sandoz Pharma Ltd.**, a Swiss corporation having its principal place of business at Lichtstrasse 35, CH-4002 Basel, Switzerland (hereinafter called "Sandoz Pharma")

and

**Athena Neurosciences, Inc.**, a Delaware corporation having its principal business at 800F Gateway Boulevard, South San Francisco, California, U.S.A. (hereinafter called "Athena").

The above mentioned Parties agree to amend Art. 1.11 and Art. 6.2 as follows:

- 1.11.     **"Territory"** means the United States of America, its territories and possessions (including Puerto Rico) and Canada, as well as the United Kingdom and Ireland.
- 6.2.       Athena, its Affiliates and its sublicensees shall pay Sandoz Pharma Supply Price (as defined in Section 7.7 of the above-mentioned Agreement) ninety (90) days from date of invoice and on such other reasonable terms and conditions as Sandoz Pharma ordinarily requires. However, for the initial two (2) pre-launch orders totaling [\*\*\*], a credit period of one hundred and eighty (180) days instead of ninety (90) days from date of invoice is granted by Sandoz.

Basel,

\_\_\_\_\_  
February 17, 1995

(date)

**SANDOZ PHARMA LTD.**

\_\_\_\_\_  
/s/  
Dr. P. Dufner

\_\_\_\_\_  
/s/  
Dr. R. Tschanen

South San Francisco,

\_\_\_\_\_  
February 24, 1995

(date)

**ATHENA NEUROSCIENCES, INC.**

\_\_\_\_\_  
/s/  
Lisabeth F. Murphy  
Vice President, Legal Affairs  
and General Counsel

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

April 12, 1991

SANDOZ PHARMA LTD.  
Lichtstr 35  
CH-4002 Basel SWITZERLAND

Gentlemen:

I am happy that we have now concluded the terms and conditions for Athena to acquire U.S. and Canadian Marketing rights to tizanidine.

As we discussed, there are a few points that are not practical to fully resolve at this time, and we agree to negotiate in good faith a final resolution of the following matters when required for marketing of the product:

(1) Sample Supply

Sandoz agrees to review Athena's sample needs to introduce and subsequently market tizanidine. Sandoz will use its good faith efforts to supply Athena's reasonable needs consistent with its own sampling policies.

(2) Final Form Packaging

Sandoz and Athena will discuss Athena's needs for final packaging forms and Sandoz agrees use its good faith efforts to supply these as close to the desired form as possible, providing Athena is prepared to accept final form packaging materials routinely used by Sandoz for tizanidine or other similar presentations.

(3) Patent Review

Sandoz and Athena agree to cooperate to permit Athena and its patent counsel to review any intellectual property protection that might be available for tizanidine prior to and during the period of Athena's marketing of this compound. Sandoz further agrees to use its good faith efforts to provide Athena license rights within the terms of the marketing agreement for any such protection which in Athena's judgment has commercial value.

Please acknowledge receipt of this letter by signing the enclosed copy and returning it to me.

Yours sincerely,

/s/  
John Groom  
President & Chief Executive Officer

Acknowledged and received by:  
**SANDOZ PHARMA**

By:	/s/	By:	/s/
Printed Name:	Dr. S. Strub	Title:	Dr. R. Tschannen
Title:	Manager Licensing	Date:	Manager Licensing
Date:	May 3, 1991		May 3, 1991

#### **PATENT ASSIGNMENT AGREEMENT**

This Patent Assignment Agreement (this "Assignment") dated as of July 21, 2004 (the "Effective Date"), is made by and between Elan Pharmaceuticals, Inc., a Delaware corporation ("Assignor"), and Acorda Therapeutics, Inc., a Delaware corporation ("Assignee"). Capitalized terms used herein but not otherwise defined herein shall have the meanings set forth in the Asset Purchase Agreement (the "Asset Purchase Agreement") dated as of July 21, 2004 by and between Assignor and Assignee.

Assignor is the owner of the Product Patent Rights, which relate to the following patent and patent application (the "Assigned Patents"), and of the inventions claimed in the Assigned Patents (the "Inventions"):

Patent	Patent No./ Application No.	Country	Date
--------	--------------------------------	---------	------

Method of Reducing Somnolence in Patients Treated with Tizanidine	6,455,557 B1	United States	September 24, 2002
Method Of Increasing the Extent of Absorption of Tizanidine.	10/645,840	United States	Filed August 22, 2003

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor assigns and transfers to the Assignee, and the Assignee's successors and assigns, and the Assignee accepts such assignment and transfer of, the entire, undivided right, title and interest in and to: (a) such Product Patent Rights and the Assigned Patents, (b) the right to file applications for patent of the United States on the Inventions, (c) any application(s) for patent of the United States claiming priority to any Assigned Patent, including any division(s), continuation(s), and continuation(s)-in-part, and (d) any patent(s) of the United States that may be granted for or on any application for patent identified in the preceding paragraphs (a) - (c), including any reissue(s) and extension(s) of said patent(s), all of the foregoing to be held and enjoyed by the above-named Assignee, for Assignee's own use and benefit; and for the benefit of Assignee's successors and assigns, to the full end of the term or terms relating to such Product Patent Rights.

The Assignor hereby covenants and agrees to and with the Assignee, its successors, legal representatives, and assigns, that the Assignor will sign all papers and documents, take all lawful oaths, and do all acts necessary or required to be done in connection with any and all proceedings for the procurement, maintenance, enforcement and defense of the Invention(s), said applications, and said patents, including interference proceedings, without charge to the Assignee, its successors, legal representatives, and assigns, but at the cost and expense of the Assignee, its successors, legal representatives, and assigns.

---

Assignor authorizes and requests the Commissioner of the United States Patent and Trademark Office, or any other party whose duty is to issue patents or other evidence or forms of industrial property protection on applications as aforesaid, to issue the same to the Assignee and the Assignee's successors and assigns, in accordance with the terms of this Assignment.

ELAN PHARMACEUTICALS, INC.

By: /s/ Jack Laflin

Name: Jack Laflin

Title: Executive Vice President

Global Core Services

STATE OF \_\_\_\_\_ :  
COUNT OF \_\_\_\_\_ : ss.

Before me, a notary public in and for the State and County aforesaid, on this \_\_\_\_\_ day of \_\_\_\_\_, 2004, personally appeared \_\_\_\_\_, who acknowledged to me that he/she is the \_\_\_\_\_, who executed the within Assignment on behalf of said corporation and acknowledged to me that he/she executed the same or the purposes therein stated.

Notary Public

My Commission Expires:

State of California )  
County of San Diego ) ss:  
)

On July 16, 2004 before me, Kellee Clinton, Notary Public  
Date \_\_\_\_\_  
Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared John Calvin Laflin - AKA Jack Laflin  
name(s) of Signer(s)

KELLEE CLINTON  
Commission # 138445  
Notary Public - California  
San Diego County  
My Comm. Expires Jul 12, 2006

- personally known to me  
 proved to me on the basis of satisfactory  
 to be the person(s) whose name(s) is/are subscribed to the  
within instrument and acknowledged to me that he/she/they  
executed the same in his/her/their authorized capacity(ies), and that  
by his/her/their signature(s) on the instrument the person(s), or the  
entity upon behalf of which the person(s) acted, executed the  
instrument.

WITNESS my hand and official seal,

/s/  
Signature of Notary Public

***OPTIONAL***

Though the Information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent  
removal and reattachment of this form to another document.

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_

Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

Number of Pages: \_\_\_\_\_

**Capacity(ies) Claimed by Signer**

Signer's Name: \_\_\_\_\_

- Individual  
 Corporate Officer - Title(s): \_\_\_\_\_  
 Partner -  Limited  General  
 Attorney-in-Fact  
 Trustee  
 Guardian or Conservator  
 Other \_\_\_\_\_

RIGHT THUMBPRINT  
OF SIGNER  
Top of thumb here

Signer Is Representing: \_\_\_\_\_

## **TRADEMARK LICENSE AGREEMENT**

This Trademark License Agreement (“Agreement”) is made this 21<sup>st</sup> day of July 2004 (the “Effective Date”) by and between Elan Pharmaceuticals, Inc., a Delaware corporation (hereinafter “Licensor”), and Acorda Therapeutics, Inc., a Delaware corporation (hereinafter “Licensee”).

WHEREAS, Licensor is the owner of the Product Trademarks;

WHEREAS, the Parties hereto desire that Licensee use the Product Trademarks on the terms and conditions hereinafter set forth; and

WHEREAS, capitalized terms used and not defined herein shall have the meanings assigned to those terms in the Asset Purchase Agreement dated as of July 21, 2004 by and between Licensor and Licensee (the “Asset Purchase Agreement”).

NOW, THEREFORE, in consideration of the promises and covenants contained herein and for good and valuable consideration, the Parties agree as follows:

1. **LICENSE :** The Licensor hereby grants to Licensee an exclusive, royalty-free license, with the right to sublicense, to use the Product Trademarks solely for the purposes of importing Products into the Territory and using, modifying, exploiting, researching, distributing, developing, marketing, selling, offering for sale and otherwise commercializing Products in the Territory. The license granted herein shall not include a right to use the Corporate Names.
  2. **USE OF PRODUCT TRADEMARKS:** Licensee agrees to use the Product Trademarks only in connection with the Products and in compliance with reasonable quality standards and specifications. Licensee agrees to correctly use the trademark symbol TM or registration symbol ® in connection with the Product Trademarks.
  3. **RIGHT TO INSPECT :** Licensee shall submit to Licensor upon request, no more than once per calendar year, one specimen sample of the Products and of all materials bearing the Product Trademarks to enable Licensor to determine whether the Product Trademarks are being used in compliance with Section 2.
  4. **OWNERSHIP:** Licensee agrees that, as between the parties hereto and their Affiliates, ownership of the Product Trademarks (and any goodwill relating thereto) shall remain vested in Licensor during the period of this Agreement, and Licensee further agrees not to challenge, contest or question the validity of such ownership of the Product Trademarks at any time during the Term of this Agreement.
  5. **INDEMNIFICATION:** Each of Licensor and Licensee hereby acknowledges that it is aware of the indemnification provisions of Article XI of the Asset Purchase Agreement and the applicability of such provisions (subject to their terms) to the marketing and sale of the Products.
-

6. **TERM:** This Agreement shall remain in effect from the Effective Date until the consummation of the Trademark Purchase (as defined in the Asset Purchase Agreement).
7. **CHOICE OF LAW:** This Agreement shall be governed by and construed under the laws of the State of New York without regard to conflict of law principles thereunder.
8. **WAIVER:** Any term or condition of this Agreement may be waived at any time by the party that is entitled to the benefit thereof, but no such waiver shall be effective unless set forth in a written instrument duly executed by or on behalf of the party waiving such term or condition. No waiver by any party hereto of any term or condition of this Agreement, in any one or more instances, shall be deemed to be or construed as a waiver of the same or any other term or condition of this Agreement on any future occasion. All remedies, either under this Agreement or by law or otherwise afforded, will be cumulative and not in the alternative.
9. **SEVERABILITY:** If any provision of this Agreement is held to be illegal, invalid or unenforceable under any present or future law, and if the rights or obligations of any party hereto under this Agreement will not be materially and adversely affected thereby, (i) such provision will be fully severable, (ii) this Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof, (iii) the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid, or unenforceable provision or by its severance herefrom, and (iv) in lieu of such illegal, invalid or unenforceable provision, there will be added automatically as a part of this Agreement a legal, valid and enforceable provision as similar to the terms of such illegal, invalid or unenforceable provision as may be possible and reasonably acceptable to the parties herein.
10. **COUNTERPARTS:** This Agreement may be executed by facsimile and in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
11. **ENTIRE AGREEMENT:** This Agreement (together with the documents referred to herein) contains the entire agreement between the parties with respect to the transactions contemplated hereby, and all prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged herein.
12. **INDEPENDENT CONTRACTORS:** Licensor and Licensee shall for all purposes be independent contractors, and this Agreement and/or the performance of the obligations hereunder shall not create any relationship in which one party or its employees, agents or representatives, are to be employees, agents, partners, joint venturers or representatives of the other party. Consequently, neither party nor its employees, agents and representatives has any power or right to bind the other party, to settle any claim by or against such party, to give any warranty or make any claim or representation on behalf of such party or to subject such party to any obligation or liability, of any kind, unless expressly authorized by such party in writing.

13. AMENDMENT: This Agreement may be amended, supplemented or modified only by a written instrument duly executed by each party hereto.

**[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]**

IN WITNESS WHEREOF, the parties hereto execute this Agreement by their duly authorized representative on the date set forth above.

**ELAN PHARMACEUTICALS, INC.**

/s/ Jack Laflin

Signature

Jack Laflin

Print Name

Executive Vice President, Global

Position      Core Services

Date

**ACORDA THERAPEUTICS, INC.**

/s/ Ron Cohen

Signature

Ron Cohen

Print Name

President and CEO

Position

Date

**Exhibit 10.26**

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

**AGREEMENT RELATING TO ADDITIONAL TRADEMARK**

This Agreement Relating to Additional Trademark (this "Agreement") is made as of July \_\_\_, 2005 (the "Effective Date") by and between Elan Pharmaceuticals, Inc. ("EPI") and Acorda Therapeutics, Inc. ("Acorda"). Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in that certain Asset Purchase Agreement by and between EPI and Acorda dated as of July 21, 2004 (the "Asset Purchase Agreement").

**RECITALS**

- A. Acorda desires to utilize the trademark "Zanaflex Capsules" (the "Mark") in connection with Zanaflex Capsules; and
- B. The parties desire set forth rights and obligations relating to the Mark as set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein and for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

1. **Rights to Mark**. The parties hereby agree that, subject to the rights granted to Acorda by making and deeming the Mark a "Product Trademark" under the Asset Purchase Agreement and Trademark License Agreement as set forth in the following paragraph, all right, title and interest in and to the Mark and all goodwill associated therewith shall be owned exclusively by EPI, and each party will execute and deliver any and all instruments and documents and perform any and all acts necessary to vest such right, title and interest in EPI.

The Mark shall be and shall be deemed to be a Product Trademark for all purposes under the Asset Purchase Agreement, the Elan Disclosure Schedule and the Trademark License Agreement, and shall be subject to all of the rights and obligations of the parties relating to the Product Trademarks contained in such documents; provided that, notwithstanding the foregoing or anything to the contrary contained in such documents, none of the representations and warranties of EPI contained in Article VI of the Asset Purchase Agreement shall apply to the Mark.

Acorda hereby represents and warrants to EPI that any use by Acorda of the Mark will comply with all applicable Laws. Acorda agrees that for purposes of its indemnification obligations relating to Assumed Liabilities contained within Section 11.02(b)(iv) of the Asset Purchase Agreement, the use by Acorda or its Affiliates of the Mark in connection with the Products shall be deemed to be included within the operation of the Business by Acorda or its Affiliates after the Closing.

2. **Registration of Mark**. As soon as is practicable after the Effective Date, EPI shall use commercially reasonable efforts to apply for and to obtain registration of the Mark in its name with the United States Patent and Trademark Office (the "PTO"), using trademark



Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

counsel engaged by EPI. Acorda will reimburse EPI for the fees of such counsel (including but not limited to fees incurred in performing customary searches for conflicting trademarks), filing fees and other fees incident to such application and registration activities; provided that in no event shall such fees to be reimbursed by Acorda in the aggregate exceed [\*\*\*] (the “Cap”). Acorda hereby represents and warrants to EPI that it knows of no trademarks currently in use anywhere in the world that would conflict with EPI’s ownership or goodwill in the Mark, or that would reasonably be expected to adversely affect EPI’s ability to obtain registration of the Mark with the PTO. EPI shall notify Acorda within two (2) business days upon registration or rejection of the Mark by the PTO.

3.        Conflicts. Except as amended by this Agreement, each of the Asset Purchase Agreement, the Elan Disclosure Schedule and the Trademark License Agreement shall continue in full force and effect. In the event of any conflict between the terms of the Agreement and the terms of any of the Asset Purchase Agreement, the Elan Disclosure Schedule and the Trademark License Agreement, the terms of this Agreement shall govern and control.

4.        Further Assurances. The parties agree to execute such further instruments, agreements and documents and to take such further actions as may reasonably be necessary to carry out the intent of this Agreement.

5.        Counterparts. This Agreement may be executed in any number of counterparts, each which shall be deemed an original, and all of which together shall constitute one instrument.

6.        Severability. If one or more provisions of this Agreement are held to be unenforceable under applicable law, such provision(s) shall be excluded from this Agreement, and the balance of this Amendment shall be interpreted as if such provision(s) were so excluded.

7.        Entire Agreement. This Agreement, together with the documents referenced herein, constitute the full and entire understanding and agreement among the parties with regard to the subjects hereof and thereof.

8.        Governing Law. This Agreement shall be governed by and construed under the laws of the State of New York, without giving effect to conflict of law principles.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

ELAN PHARMACEUTICALS, INC.

By: /s/Joe Boudreau  
Name: Joe Boudreau  
Title: SVP

ACORDA THERAPEUTICS, INC.

By: /s/Ron Cohen  
Name: Ron Cohen  
Title: President & CEO

**Exhibit 10.27**

**DOMAIN NAME ASSIGNMENT AGREEMENT**

This Domain Name Assignment Agreement (this “Agreement”), dated as of July 21, 2004, is made by and between Elan Pharmaceuticals, Inc., a Delaware corporation (“Assignor”), and Acorda Therapeutics, Inc., a Delaware corporation (“Assignee”).

**RECITALS**

WHEREAS, Assignor and Assignee are parties to that certain Asset Purchase Agreement dated as of July 21, 2004 (the “Asset Purchase Agreement”);

WHEREAS, capitalized terms used herein and not otherwise defined herein shall have the meanings given to such terms in the Asset Purchase Agreement;

WHEREAS, Assignor has registered and adopted the Internet domain names set forth on Schedule A attached hereto and incorporated herein by reference (the “Domain Names”) with Network Solutions (together with any affiliated or other entity that is responsible for the registration of domain names in the United States, “NSI”); and

WHEREAS, Assignee is acquiring all right, title and interest in and to the Domain Names from Assignor pursuant to the terms of the Asset Purchase Agreement.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Subject to the terms and conditions of the Asset Purchase Agreement and the other Related Agreements, Assignor does hereby sell, grant, convey, assign, transfer, and deliver to Assignee, free and clear of any Encumbrances other than Permitted Encumbrances, all right, title and interest in and the Domain Names and all goodwill associated therewith.

2. Assignor covenants and agrees that it shall promptly carry out jointly with Assignee the formal transfer of the Domain Names to Assignee in accordance with the domain name transfer procedure of NSI (the “Transfer Procedure”). Assignor hereby agrees that it shall take such further actions and execute such other instruments as Assignee may reasonably request to give effect to the foregoing assignment of the Domain Names, including, but not limited to, such documents as are necessary to effect the formal transfer of the Domain Names to Assignee in accordance with the Transfer Procedure. All customary costs charged by NSI in connection with the Transfer Procedure shall be paid solely by Assignee. In connection with this transfer, Assignor shall provide any necessary information to NSI or its designee, including but not limited to, the name or names identified by Assignee for billing, administrative and technical contacts, to the extent required by the Transfer Procedures.

3. As soon as reasonably possible after the date hereof, Assignor will stop all use of the Domain Names for any purpose, including, but not limited to, use for an Internet site or for electronic mail. Assignor shall not adopt any new uses of the Domain Names.

4. Assignor shall not use the Domain Names alone or in combination with any other terms, will Assignor register or use any confusingly similar designation, trademark, service

---

mark, trade name nor domain name in connection with the promotion or sale of any service or products anywhere in world.

5. Assignor shall not challenge or object to Assignee's right to register, use, own or transfer the Domain Names anywhere in the world.

6. Notwithstanding any other provisions of this Agreement to the contrary, nothing contained in this Agreement shall in anyway supersede, modify, replace, amend, change, rescind, waive, exceed, expand, enlarge or in any way affect the provisions, including warranties, covenants, agreements, conditions, representations or, in general, any of the rights and remedies, or any of the obligations and indemnifications of Assignor or Assignee set forth in the Asset Purchase Agreement and the other Related Agreements. This Agreement is intended only to effect the transfer of certain property transferred pursuant to the Asset Purchase Agreement and the other Related Agreements and shall be governed entirely in accordance with the terms and conditions of the Asset Purchase Agreement and the other Related Agreements.

7. This Agreement shall be governed by and enforced in accordance with and governed by laws of the State of New York, without giving effect to conflicts of law principles.

8. This Agreement shall be binding on, and shall inure to the benefit of, the parties hereto and their respective successors and assigns.

9. Each party represents that it has taken all necessary action to authorize the execution and delivery of this Agreement.

10. This Agreement may be executed by the parties herein in separate counterparts and by facsimile, each of which when so executed and delivered shall be an original, but all such counterparts and facsimiles shall together constitute one and the same instrument.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

ELAN PHARMACEUTICALS, INC.

By: /s/

Name: Jack Laflin  
Title: Executive Vice President,  
Global Core Services

ACORDA THERAPEUTICS, INC.

By: /s/

Name: Ron Cohen  
Title: President & CEO

[SIGNATURE PAGE TO DOMAIN NAME ASSIGNMENT AGREEMENT]

---

## **SCHEDULE A**

### **DOMAIN NAMES**

1. ZANAFLEX.COM
  2. ZANAFLEX.ORG
  3. ZANAFLEX.NET
  4. ZANAFLEX.BIZ
  5. ZANAFLEX.US
  6. ZANAFLEX.INFO
- 

**Exhibit 10.28**

### **BILL OF SALE AND ASSIGNMENT AND ASSUMPTION AGREEMENT**

KNOW ALL MEN BY THESE PRESENTS, on this 21st day of July, 2004, pursuant to the terms of that certain Asset Purchase Agreement dated as of July 21, 2004 (the “Asset Purchase Agreement”) by and between Elan Pharmaceuticals, Inc., a Delaware corporation (“Seller”), and Acorda Therapeutics, Inc., a Delaware corporation (“Buyer”), this Bill of Sale and Assignment and Assumption Agreement (this “Bill of Sale”) is being executed and delivered by Seller and Buyer. The execution and delivery of this Bill of Sale is a closing delivery requirement pursuant to Section 5.02(a)(i) of the Asset Purchase Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. Capitalized terms used herein but not defined herein shall have the meanings assigned to such terms in the Asset Purchase Agreement.
  2. Subject to the terms and conditions of the Asset Purchase Agreement and the other Related Agreements, Seller hereby sells, assigns, transfers and conveys to Buyer, and Buyer hereby purchases, acquires and accepts from Seller, all of Seller’s right, title and interest in and to the Purchased Assets, free and clear of any Encumbrances other than Permitted Encumbrances.
  3. From time to time after the date hereof, Seller will execute and deliver to Buyer such instruments of sale, assignment, transfer, conveyance, and delivery, and such consents, assurances, and other instruments as may be reasonably requested by Buyer or its counsel in order to vest in the Buyer all right, title and interest of Seller in and to such Purchased Assets and otherwise in order to carry out the purpose and intent of this Bill of Sale.
  4. Subject to the terms and conditions of the Asset Purchase Agreement and the other Related Agreements, Seller hereby assigns and Buyer hereby accepts and assumes and agrees to satisfy, perform, pay, honor and discharge when due, all of the Assumed Liabilities.
  5. Notwithstanding any other provisions of this Bill of Sale to the contrary, nothing contained in this Bill of Sale shall in any way supersede, modify, replace, amend, change, rescind, waive, exceed, expand, enlarge or in any way affect the provisions, including warranties, covenants, agreements, conditions, representations or, in general, any of the rights and remedies, or any of the obligations and indemnifications of Seller or Buyer set forth in the Asset Purchase Agreement and the other Related Agreements. This Bill of Sale is intended only to effect the transfer of certain property transferred pursuant to the Asset Purchase Agreement and the other Related Agreements and shall be governed entirely in accordance with the terms and conditions of the Asset Purchase Agreement and the other Related Agreements. Nothing contained in this Bill of Sale is intended to provide any right or remedy to any person or entity, other than Seller and Buyer.
  6. This Bill of Sale shall in all respects be construed in accordance with and governed by the laws of the State of New York without giving effect to its conflicts-of-laws principles.
-

7. This Bill of Sale may be executed by the parties hereto in separate counterparts and by facsimile, each of which when so executed and delivered shall be an original, but all such counterparts and facsimiles shall together constitute one and the same instrument.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Bill of Sale to be executed and delivered as of the date and year first above written.

ELAN PHARMACEUTICALS, INC.

By: /s/ Jack Laflin  
Name: Jack Laflin  
Title: Executive Vice President,  
Global Core Services

ACORDA THERAPEUTICS, INC.

By: \_\_\_\_\_  
Name:  
Title:

[SIGNATURE PAGE TO BILL OF SALE]

IN WITNESS WHEREOF, the parties hereto have caused this Bill of Sale to be executed and delivered as of the date and year first above written.

ELAN PHARMACEUTICALS, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ACORDA THERAPEUTICS, INC.

By: /s/ Ron Cohen  
Name: Ron Cohen  
Title: President and CEO

[SIGNATURE PAGE TO BILL OF SALE]

---

**Exhibit 10.29**

THIS NOTE HAS BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO, OR IN CONNECTION WITH THE SALE OR DISTRIBUTION THEREOF. NEITHER THIS CONVERTIBLE PROMISSORY NOTE NOR ANY OF THE SECURITIES ISSUABLE HEREUNDER HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR THE APPLICABLE SECURITIES LAWS OF ANY STATE, AND MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, OTHER THAN TO AFFILIATES, IN THE ABSENCE OF A REGISTRATION STATEMENT IN EFFECT WITH RESPECT TO SUCH CONVERTIBLE PROMISSORY NOTE OR SECURITIES, OR DELIVERY OF AN OPINION OF COUNSEL WHO SHALL BE AND WHOSE OPINION SHALL BE REASONABLY SATISFACTORY TO THE CORPORATION STATING THAT SUCH OFFER, SALE OR TRANSFER IS EXEMPT FROM THE REGISTRATION AND PROSPECTUS DELIVERY REQUIREMENTS OF SAID ACT AND APPLICABLE STATE SECURITIES LAWS.

ACORDA THERAPEUTICS, INC.

**LIMITED RE COURSE CONVERTIBLE PROMISSORY NOTE**

\$5,000,000.00

New York, New York  
January 22, 1997

FOR VALUE RECEIVED, Acorda Therapeutics, Inc., a Delaware corporation (the "Company"), hereby promises to pay to Elan International Services, Ltd., a Bermuda corporation (the "Holder"), the principal sum of Five Million Dollars (\$5,000,000.00), plus interest compounded annually on the unpaid balance commencing to accrue from and after the first anniversary of the date hereof 'at a rate of three percent (3%) per annum payable upon the earlier of the prepayment in accordance with Section 2 hereof or on the Maturity Date (as defined below).

This Promissory Note is issued in connection with that certain Series B and Series C Preferred Stock, Convertible Note and Warrant Purchase Agreement, dated as of January 22, 1997 (the "Purchase Agreement") between the Company and the Holder, and that certain License and Supply Agreement, dated as of January 22, 1997 (the "License Agreement"), between the Company and Elan Corporation, plc.

**Section 1. Payment.** If the Holder has not converted the outstanding principal hereunder into Preferred Stock in accordance with Section 3 hereof by the date which is the first anniversary after the first Regulatory Approval (as defined below)(the "Maturity Date"), the Company shall be obligated to pay the outstanding principal sum remaining on this Promissory Note, together with all accrued and

unpaid interest thereon, to Holder in seven (7) equal installments, the first of which shall be paid on the Maturity Date, and the balance of which shall be paid on the six (6) successive anniversaries of the Maturity Date; provided, however, that if the Committee (as defined in the License Agreement) reasonably determines that such Regulatory Approval is unlikely to be obtained or shall not be obtained in a timely manner and

---

provides written notice (the “Notice”) thereof to the Company and the Holder (a “Committee Termination”), then on the tenth day following receipt of the Notice, the outstanding principal sum remaining on this Promissory Note, together with all accrued and unpaid interest thereon, shall be canceled and not repayable and shall result in the termination of this Promissory Note; provided, further, that if the Company otherwise determines to terminate the License Agreement as a result of its reasonable and good faith belief that the market for the Products (as defined in the License Agreement) is not economically significant and there is not at such time a material default by the Company thereunder, which termination complies with the provisions of the License Agreement (a “Company Termination”), then, subject to earlier conversion, the Company shall be obligated to pay the outstanding principal sum remaining on this Promissory Note to Holder, together with all accrued and unpaid interest thereon, in fifteen (15) equal installments, the first of which shall be paid on the first anniversary after the date of the Notice, and the balance of which shall be paid on the fourteen (14) successive anniversaries of the date of the Notice. “Regulatory Approval” shall mean (x) approval for the sale and marketing of one or more of the Products by the United States Food and Drug Administration or (y) approval for the sale and marketing of one or more of the Products by the CPMP in the European Union and/or not more than one of the applicable regulatory authorities in the United Kingdom, France or Germany denying such approval.

All payments of principal and accrued interest made in accordance with this Promissory Note are to be made at the address of the Holder as indicated on the signature page hereto, or at such other address as the Holder may designate from time to time by written notice to the Company. Such payments may be made (i) by check or wire transfer in next day United States funds, (ii) by delivery of certificates evidencing shares of the Company’s Common Stock, if the Company is then a reporting issuer registered under Section 12 of the Securities Exchange Act of ‘1934, as amended, or (iii) any combination thereof. Where payment is made in shares of the Company’s Common Stock, such stock will be valued for purposes hereof at 100% of its Market Value if such shares have been registered under the Securities Act of 1933, as amended (the “1933 Act”), and freely tradeable by the Holder without restriction under applicable federal or state securities laws, and will be valued for purposes hereof at 80% of its Market Value if such shares are “restricted securities” within the meaning of Rule 144 under the 1933 Act. “Market Value” shall mean the average of the closing sales prices of the Company’s Common Stock as reported by Nasdaq (or other principal securities exchange on which the Company’s Common Stock may then be traded) for the fifteen (15) trading days ending on the third day preceding the date of payment.

The Holder expressly acknowledges that all payments of principal and accrued interest under this Promissory Note shall be derived from the sales of the Products as described below in this paragraph. In the event that in any fiscal year of the Company, the Company’s Gross Margin (as defined below) is less than \$5 million, then, in such event, notwithstanding the other provisions of this Promissory Note, the Company shall be obligated to pay to the Holder in respect of payment of principal and accrued interest next due and payable following the end of such fiscal year an amount equal to the lesser of (x) the amount of principal and accrued interest otherwise payable hereunder for each year or (y) an amount equal to 50% of such Gross Margin; provided, that in the event that clause (y) above is applicable, the difference between the amount described in clause (x) above and the amount described in clause (y) above in respect of such fiscal year shall be deferred and carried forward until such succeeding fiscal year or fiscal years

of the Company in respect of which there is any excess of the amount of the Gross Margin over the amount otherwise payable under this Promissory Note (i.e., without regard to this paragraph), in which case, such excess amount described in this proviso shall be applied to pay such deferred and carried forward amount; provided, further, that the maximum number of fiscal years during which any amount of principal and interest may be deferred hereunder shall not exceed two, after which period the Company's obligation to pay such deferred principal and interest shall resume. "Gross Margin" for each fiscal year of the Company shall be determined by an audit in accordance with generally accepted accounting principles consistently applied and shall mean the difference between the net revenues derived from the Products and the cost of sales in respect thereof (including, without limitation, all direct costs such as materials, insurance, freight, discounts and similar costs) and an appropriate allocation of corporate overhead (but excluding research and development expenses) as reasonably determined by the Company.

If action is instituted to collect on this Promissory Note, the Company promises to pay all costs and expenses, including reasonable attorneys' fees, incurred in connection with such action. The Company also agrees to pay on demand all costs and expenses of the Holder, including reasonable attorneys' fees, in connection with the enforcement or attempted enforcement of, and preservation of any rights under, this Promissory Note.

Interest payable under this Promissory Note shall be calculated on the basis of actual number of days elapsed over a year of 365 days. All payments received by the Holder hereunder will be applied first to costs of collection and other costs and expenses owing hereunder or in connection herewith, if any, then to interest and the balance to principal.

No delay or omission on the part of the Holder in exercising any right hereunder shall operate as a waiver of such right or any other right of the Holder, nor shall any delay, omission or waiver of any one occasion be deemed a bar to or waiver of the same or any other right or any other occasion. The Company and every endorser and guarantor of this Promissory Note regardless of the time, order or place of signing hereby waives presentment, demand, protest and notice of every kind, and assents to any extension or postponement of the time for payment or any other indulgence, to any substitution, exchange or release of collateral, and to the addition or release of any other party or person or entity primarily or secondarily liable.

**Section 2. Prepayment.** The Company, at its option, may at any time on or after the date hereof prepay in whole or in part, without penalty, the principal balance of this Promissory Note, together with accrued interest to the date of payment, by giving written notice to the Holder at least thirty (30) days prior to the date of such prepayment; provided, however, that during such thirty (30) day period, the Holder shall be entitled to convert the principal balance of this Promissory Note in accordance with the provisions of Section 3 hereof.

### **Section 3. Conversion.**

3.1     **Voluntary Conversion into Series D Preferred Stock**. The Holder has the right and option, upon written notice and prior to the payment in full of the principal balance of this Promissory Note, to convert the then unpaid principal amount of this Promissory Note (but not accrued and unpaid interest), in accordance with the provisions of Section 3.2 hereof, in whole or in part, into fully paid and nonassessable shares of the Series D Preferred Stock of the

Company (the “Series D Preferred”) at a rate which shall be equal to the quotient obtained by dividing:

- (x) the principal amount of this Promissory Note to be converted, by
- (y) \$12.50.

The right and option of the Holder to convert the unpaid principal amount of this Promissory Note into Series D Preferred shall terminate upon the first to occur of: (i) the termination of this Promissory Note as a result of a Committee Termination; or (ii) the payment (or prepayment) by the Company of all amounts owing under this Promissory Note (subject to the notice requirements of Section 2 hereof). For purposes of this Note, “Series D Preferred” shall be deemed to include the Common Stock of the Company upon the automatic conversion of all of the outstanding Preferred of the Company in accordance with the provision of the Company’s Certificate of Incorporation.

**3.2      Mechanics and Effect of Conversion.** No fractional shares of Preferred will be issued upon any conversion of this Promissory Note. In lieu of any fractional share to which the Holder would otherwise be entitled, the Company will pay to the Holder that amount of the unconverted principal balance of this Promissory Note in cash. Upon any conversion of this Promissory Note pursuant to this Section 3, the Holder shall surrender this Promissory Note, duly endorsed, together with a written notice of election to convert, at the principal offices of the Company or any transfer agent for the Company. At its expense, the Company will, as soon as practicable thereafter, issue and deliver to the Holder, a certificate or certificates for the number of shares of Series D Preferred to which the Holder is entitled upon such conversion, together with a check for immediately available funds payable to the Holder for any cash amounts payable to Holder. Upon any conversion of the entire principal amount of this Promissory Note, the Company will be forever released from all of its obligations and liabilities under this Promissory Note with regard to the entire principal amount, including, without limitation, the obligation to pay such principal amount.

**Section 4. Senior Indebtedness**. The Company agrees that it shall not, after the date hereof, incur any Senior Indebtedness to this Promissory Note and the indebtedness evidenced hereby. “Senior Indebtedness” shall mean the principal of and unpaid interest on any secured or other indebtedness of the Company which purports to provide for a preference or priority in payment to this Promissory Note and the indebtedness evidenced hereby; provided, however, that this term shall exclude (i) the principal of and unpaid interest on any amounts borrowed or to be borrowed from, or owing to, a bank, trust company, insurance company or other financial institution regularly engaged in the business of lending money, whether secured or unsecured; (ii) amounts owed or to be owed to equipment lessors pursuant to equipment lease lines (so long as recourse is limited to the specific item of equipment); and (iii) amounts owed or to be owed to trade creditors in the ordinary course of business, in accordance with reasonable and customary business practices.

**Section 5. Miscellaneous**.

5.1       **Titles and Subtitles**. The titles and subtitles used herein are for convenience only and are not to be considered in construing or interpreting this Promissory Note.

5.2       **Notices**. Unless otherwise provided, any notice required or permitted under this Promissory Note shall be given in writing and shall be deemed effectively given upon personal delivery to the party to be notified, upon delivery by facsimile transmission, or upon the fifth business day after deposit with the United States Post Office, postage prepaid and addressed to the party to be notified at the address indicated for such party on the signature page hereof, or at such other address as such party may designate by ten (10) days advance written notice to the other party.

5.3       **Highest Lawful Rate**. Anything in this Promissory Note to the contrary notwithstanding, the Company shall never be required to pay interest on this Promissory Note at a rate in excess of the Highest Lawful Rate (as hereinafter defined), and if the effective rate of interest which would otherwise be payable under this Promissory Note would exceed the Highest Lawful Rate, or if the maturity of this Promissory Note is accelerated for any reason before the Maturity Date, or in the event of voluntary prepayment by the Company hereof, or if the Holder shall otherwise receive any unearned interest or shall receive monies that are deemed to constitute interest which would increase the effective rate of interest payable under this Promissory Note to a rate in excess of the Highest Lawful Rate, then (a) the amount of interest which would otherwise be payable under this Promissory Note shall be reduced to the amount allowed under applicable law, and (b) any interest paid by the Company or any interest paid by the Company in excess of the Highest Lawful Rate shall be credited to the principal of this Promissory Note. It is further agreed that, without limitation of the foregoing, all calculations of the rate of interest contracted for, charged or received by the Holder under this Promissory Note that are made for the purpose of determining whether such rate exceeds the Highest Lawful Rate shall be made, to the extent permitted by applicable usury laws (now or hereafter enacted), by amortizing, prorating and spreading in equal parts during the period of the full stated term of this Promissory Note all interest at any time contracted for, charged or received by the Holder in connection herewith. “Highest Lawful Rate” shall mean the maximum rate of interest which the Holder is permitted by applicable law to contract for, charge or receive and as to which the Company could not successfully assert a claim or defense of usury.

5.4        **Amendments and Waivers**. Any term of this Promissory Note may be amended and the observance of any term of this Promissory Note may be waived (either generally or in a particular instance and either retroactively or prospectively), only with the written consent of the Company and the Holder.

5.5        **Severability**. If one or more provisions of this Promissory Note are held to be unenforceable under applicable law, such provision shall be excluded from this Promissory Note, and the remaining provisions of this Promissory Note shall be interpreted as if such provision were so excluded and shall be enforceable in accordance with their terms, with the effect of the excluded provision being taken into consideration and the remaining terms construed in accordance with the intent of this Promissory Note.

5.6        **Governing Law**. This Promissory Note shall be governed by and construed and enforced in accordance with the internal laws of the State of Delaware, without giving effect to principles governing conflicts of laws.

5.7        **Non-Transferability**. This Promissory Note may not be transferred or assigned by the Holder without the prior written consent of the Company; provided, however, that no consent of the Company shall be required for any transfer or assignment of this Promissory Note to an affiliate (within the meaning of the Securities Act of 1933, as amended) of the Holder.

[Remainder of Page Intentionally Left Blank]

**IN WITNESS WHEREOF**, this Limited Recourse Convertible Promissory Note has been duly executed and delivered as of the date first above written.

ACORDA THERAPEUTICS, INC.  
a Delaware corporation

By: \_\_\_\_\_  
Ron Cohen, M.D.  
President and Chief Executive Officer

Address: 145 West 58th Street  
New York, New York 10019

**Exhibit 10.30**

THIS NOTE HAS BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO, OR IN CONNECTION WITH THE SALE OR DISTRIBUTION THEREOF. NEITHER THIS CONVERTIBLE PROMISSORY NOTE NOR ANY OF THE SECURITIES ISSUABLE HEREUNDER HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR THE APPLICABLE SECURITIES LAWS OF ANY STATE, AND MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, OTHER THAN TO AFFILIATES, IN THE ABSENCE OF A REGISTRATION STATEMENT IN EFFECT WITH RESPECT TO SUCH CONVERTIBLE PROMISSORY NOTE OR SECURITIES, OR DELIVERY OF AN OPINION OF COUNSEL WHO SHALL BE AND WHOSE OPINION SHALL BE REASONABLY SATISFACTORY TO THE CORPORATION STATING THAT SUCH OFFER, SALE OR TRANSFER IS EXEMPT FROM THE REGISTRATION AND PROSPECTUS DELIVERY REQUIREMENTS OF SAID ACT AND APPLICABLE STATE SECURITIES LAWS.

**ACORDA THERAPEUTICS, INC.**

**FULL RE COURSE CONVERTIBLE PROMISSORY NOTE**

\$ 2,500,000.00

New York, New York  
January 22, 1997

FOR VALUE RECEIVED, Acorda Therapeutics, Inc., a Delaware corporation (the "Company"), hereby promises to pay to Elan International Services, Ltd., a Bermuda corporation (the "Holder") the principal sum of Two Million Five Hundred Thousand Dollars (\$2,500,000.00), without interest, until paid or converted in accordance with the terms hereof, payable on the Maturity Date (as defined below).

This Promissory Note is issued in connection with that certain Series B and Series C Preferred Stock, Convertible Note and Warrant Purchase Agreement, dated as of January 22, 1997 (the "Purchase Agreement") between the Company and the Holder, and that certain License and Supply Agreement, dated as of January 22, 1997 (the "License Agreement"), between the Company and Elan Corporation, plc.

**Section 1. Payment.** If the Holder has not converted the outstanding principal hereunder into Preferred Stock in accordance with Section 3 hereof by the date which is the first anniversary after the first Regulatory Approval (as defined below) (the "Maturity Date"), the Company shall be obligated to pay the outstanding principal sum remaining on this Promissory Note to Holder in seven (7) equal installments, the first of which shall be paid on the Maturity Date, and the balance of which shall be paid on the six (6) successive anniversaries of the Maturity Date; provided, however, that if (i) the Committee (as defined in the License Agreement) reasonably determines that such Regulatory Approval is unlikely to be obtained or shall not be obtained in a timely manner and provides written notice (the "Notice") thereof to the Company and the Holder (a "Committee Termination"), or (ii) the Company otherwise determines to terminate the License Agreement as a result of its reasonable and good faith belief

---

that the market for the Products (as defined in the License Agreement) is not economically significant and there is not at such time a material default by the Company thereunder, which termination complies with the provisions of the License Agreement (a “Company Termination”), then, subject to earlier termination, the Company shall be obligated to pay the outstanding principal sum remaining on this Promissory Note to Holder in fifteen (15) equal installments, the first of which shall be paid on the first anniversary after the date of the Notice, and the balance of which shall be paid on the fourteen (14) successive anniversaries of the date of the Notice. “Regulatory Approval” shall mean (x) approval for the sale and marketing of one or more of the Products by the United States Food and Drug Administration or (y) approval for the sale and marketing of one or more of the Products by the CPMP in the European Union and/or not more than one of the applicable regulatory authorities in the United Kingdom, France or Germany denying such approval.

All payments of principal made in accordance with this Promissory Note are to be made at the address of the Holder as indicated on the signature page hereto, or at such other address as the Holder may designate from time to time by written notice to the Company. Such payments may be made (i) by check or wire transfer in next day United States funds, (ii) by delivery of certificates evidencing shares of the Company’s Common Stock, if the Company is then a reporting issuer registered under Section 12 of the Securities Exchange Act of 1934, as amended, or (iii) any combination thereof. Where payment is made in shares of the Company’s Common Stock, such stock will be valued for purposes hereof at 100% of its Market Value if such shares have been registered under the Securities Act of 1933, as amended (the “1933 Act”), and freely tradeable by the Holder without restriction under applicable federal or state securities laws, and will be valued for purposes hereof at 80% of its Market Value if such shares are “restricted securities” within the meaning of Rule 144 under the 1933 Act. “Market Value” shall mean the average of the closing sales prices of the Company’s Common Stock as reported by Nasdaq (or other principal securities exchange on which the Company’s Common Stock may then be traded) for the fifteen (15) trading days ending on the third day preceding the date of payment.

If action is instituted to collect on this Promissory Note, the Company promises to pay all costs and expenses, including reasonable attorneys’ fees, incurred in connection with such action. The Company also agrees to pay on demand all costs and expenses of the Holder, including reasonable attorneys’ fees, in connection with the enforcement or attempted enforcement of, and preservation of any rights under, this Promissory Note.

No delay or omission on the part of the Holder in exercising any right hereunder shall operate as a waiver of such right or any other right of the Holder, nor shall any delay, omission or waiver of any one occasion be deemed a bar to or waiver of the same or any other right or any other occasion. The Company and every endorser and guarantor of this Promissory Note regardless of the time, order or place of signing hereby waives presentment, demand, protest and notice of every kind, and assents to any extension or postponement of the time for payment or any other indulgence, to any substitution, exchange or release of collateral, and to the addition or release of any other party or person or entity primarily or secondarily liable.

**Section 2.            Prepayment**. Subject to section 3.1, the Company, at its option, may at any time on or after the date hereof prepay in whole or in part, without penalty, the principal

balance of this Promissory Note by giving written notice to the Holder at least thirty (30) days prior to the date of such prepayment; provided, however, that during such thirty (30) day period, the holder shall be entitled to convert the principal balance of this Promissory Note in accordance with the provisions of Section 3 hereof .

### **Section 3.        Conversion.**

**3.1        Voluntary Conversion into Preferred Stock.** The Holder has the right and option, upon written notice and at any time subsequent to January 22, 1999 and prior to the payment in full of the principal balance of this Promissory Note, to convert the then unpaid principal amount of this Promissory Note, in accordance with the provisions of Section 3.2 hereof, in whole or in part, into fully paid and nonassessable shares of Preferred Stock of the Company (the “Preferred”) at a rate which shall be equal to the quotient obtained by dividing:

- (x)        the principal amount of this Promissory Note to be converted, by
- (y)        the greater of:
  - (a) \$2.00, and
  - (b) 80% of the closing sales price of the Institutional Financing (as defined below) most recently completed by the Company prior to the written notice of conversion.

Provided, however, that the Company shall be obligated to provide prompt notice to the Holder of its intent to negotiate terms with respect to any Institutional Financing, and thereafter, the Holder’s right of conversion (and the Company’s right to prepay under Section 2) may not be exercised during the thirty (30) day period that precedes the closing date of any Institutional Financing.

In the event that the denominator of the above formula shall be determined by reference to (y)(a), then “Preferred” shall mean the Series B Preferred Stock of the Company. In the event that the denominator of the above formula shall be determined by reference to (y)(b), then “Preferred” shall mean shares of a series of Preferred Stock of the Company which shall be convertible initially into one fully paid and nonassessable share of the Common Stock of the Company, in accordance with the same terms and conditions and having the rights, preferences and privileges substantially on parity with those of the Company’s Series B Preferred Stock as set forth in the Company’s Amended and Restated Certificate of Incorporation (the “Certificate”).

For the purposes of this Section 3.1, an “Institutional Financing” shall mean a bona fide equity financing of the Company occurring after the date hereof which is completed with any institutional and/or venture capital or similar financing sources.

The right and option of the Holder to convert the unpaid principal amount of this Promissory Note into Preferred shall terminate upon the payment (or prepayment) by the Company of all amounts owing under this Promissory Note (subject to the notice requirements of Section 2 hereof). For purposes of this Section 3.1, “Preferred” shall be deemed to include the

Common Stock of the Company upon the automatic conversion of all of the outstanding Preferred of the Company in accordance with the provisions of the Certificate.

**3.2 Mechanics and Effect of Conversion.** No fractional shares of Preferred will be issued upon any conversion of this Promissory Note. In lieu of any fractional share to which the Holder would otherwise be entitled, the Company will pay to the Holder that amount of the unconverted principal balance of this Promissory Note in cash. Upon any conversion of this Promissory Note pursuant to this Section 3, the Holder shall surrender this Promissory Note, duly endorsed, together with a written notice of election to convert, at the principal offices of the Company or any transfer agent for the Company. At its expense, the Company will, as soon as practicable thereafter, issue and deliver to the Holder, a certificate or certificates for the number of shares of Preferred to which the Holder is entitled upon such conversion, together with a check for immediately available funds payable to the Holder for any cash amounts payable to Holder. Upon any conversion of the entire principal amount of this Promissory Note, the Company will be forever released from all of its obligations and liabilities under this Promissory Note with regard to the entire principal amount, including, without limitation, the obligation to pay such principal amount.

**Section 4. Senior Indebtedness.** The Company agrees that it shall not, after the date hereof, incur any senior indebtedness to this Promissory Note and the indebtedness evidenced hereby. "Senior Indebtedness" shall mean the principal of and unpaid interest on any secured or other indebtedness of the Company which purports to provide for a preference or priority in payment to this Promissory Note and the indebtedness evidenced hereby; provided, however, that this term shall exclude (i) the principal off and unpaid interest on any amounts borrowed or to be borrowed from, or owing to, a bank, trust company, insurance company or other financial institution regularly engaged in the business of lending money, whether secured or unsecured, (ii) amounts owed or to be owed to equipment lessors pursuant to equipment lease lines (so long as recourse is limited to the specific item of equipment); and (iii) amounts owed or to be owed to trade creditors in the ordinary course of business, in accordance with reasonable and customary business practices.

**Section 5. Miscellaneous.**

**5.1 Titles and Subtitles.** The titles and subtitles used herein are for convenience only and are not to be considered in construing or interpreting this Promissory Note.

**5.2 Notices.** Unless otherwise provided, any notice required or permitted under this Promissory Note shall be given in writing and shall be deemed effectively given upon personal delivery to the party to be notified, upon delivery by facsimile transmission, or upon the fifth business day after deposit with the United States Post Office, postage prepaid and addressed to the party to be notified at the address indicated for such party on the signature page hereof, or at such other address as such party may designate by ten (10) days advance written notice to the other party.

**5.3 Amendments and Waivers.** Any term of this Promissory Note may be amended and the observance of any term of this Promissory Note may be waived (either generally or in a particular instance and either retroactively or prospectively), only with the

written consent of the Company and the Holder. Any amendment or waiver effected in accordance with this subsection 5.3 shall be binding upon the Holder of this Promissory Note, each future holder of all such securities and the Company.

**5.4      Severability**. If one or more provisions of this Promissory Note are held to be unenforceable under applicable law, such provision shall be excluded from this Promissory Note, and the remaining provisions of this Promissory Note shall be interpreted as if such provision were so excluded and shall be enforceable in accordance with their terms, with the effect of the excluded provision being taken into consideration and the remaining terms construed in accordance with the intent of this Promissory Note.

**5.5      Governing Law**. This Promissory Note shall be governed by and construed and enforced in accordance with the internal laws of the State of Delaware, without giving effect to principles governing conflicts of laws.

**5.6      Non-Transferability**. This Promissory Note may not be transferred or assigned by the Holder without the prior written consent of the Company; provided, however, that no consent of the Company shall be required for any transfer or assignment of this Promissory Note to an affiliate (within the meaning of the Securities Act of 1933, as amended) of the Holder.

[Remainder of Page Intentionally Left Blank]

**IN WITNESS WHEREOF**, this Full Recourse Convertible Promissory Note has been duly executed and delivered as of the date first above written.

ACORDA THERAPEUTICS, INC.  
a Delaware corporation

By: \_\_\_\_\_

Ron Cohen, M.D.  
President and Chief Executive Officer

Address: 145 West 58th Street  
New York, New York 10019

**Exhibit 10.31**

**SECURITIES AMENDMENT AGREEMENT**

**AMONG**

**ELAN CORPORATION, PLC,**

**ELAN INTERNATIONAL SERVICES, LTD.**

**AND**

**ACORDA THERAPEUTICS, INC.**

---

**THIS SECURITIES AMENDMENT AGREEMENT** made this 26th day of September, 2003 (this “**Agreement**”)

**AMONG:-**

- (1) **ELAN CORPORATION, PLC**, a public limited company incorporated under the laws of Ireland and having its registered office at Lincoln House, Lincoln Place, Dublin 2, Ireland (“**Elan Corp**”);
- (2) **ELAN INTERNATIONAL SERVICES, LTD.**, an exempted limited liability company incorporated under the laws of Bermuda, and having its registered office at Clarendon House, 2 Church St., Hamilton, Bermuda, a wholly-owned subsidiary of Elan Corp (“**EIS**”); and
- (3) **ACORDA THERAPEUTICS, INC.**, a Delaware corporation having its principal place of business at 15 Skyline Drive, Hawthorne, NY 10532, United States of America (“**Acorda**”).

**RECITALS**

- A. Acorda and EIS have entered into agreements whereby Acorda sold and EIS purchased certain securities of Acorda and such parties agreed to certain matters related to the ownership of such securities. Specifically:
- (i) EIS and Acorda entered into a Preferred Stock, Convertible Note and Warrant Purchase Agreement dated as of January 22, 1997 (the “**1997 Securities Purchase Agreement**”);
  - (ii) EIS and Acorda entered into a Securities Purchase Agreement dated April 21, 1998 (the “**1998 Securities Purchase Agreement**”);
  - (iii) EIS and Acorda entered into a Subscription Agreement dated as of August 6, 1999 (the “**1999 Securities Purchase Agreement**”);
  - (iv) Acorda and certain stockholders of Acorda including EIS entered into an Amended and Restated Registration Rights Agreement with respect to the capital stock of Acorda dated January 22, 1997, as amended and restated July 7, 1998, August 6, 1999, December 20, 2000 and May 8, 2003, as a result of which, *inter alia*, additional purchasers were added as parties to such agreement (as amended and restated, the “**Acorda Registration Rights Agreement**”); and
  - (v) Elan Corp, Acorda and certain other stockholders entered into an Amended and Restated Stockholders Agreement dated December 20,
-

2000, as amended and restated as of May 8, 2003 (the “**Stockholders Agreement**” ).

- B. The Parties have entered into a Termination Agreement of even date herewith (the “**Termination Agreement**”).
- C. Simultaneously with the execution of the Termination Agreement, Elan Corp and Acorda are entering into a Amended and Restated License and Supply Agreement, pursuant to which, among other things, certain of the parties thereto are amending and restating that certain License Agreement (the “**Restated Elan License Agreement**”) by and among Acorda, Elan Corp and MS Research and Development Corporation (“**MS R&D**”).
- D. The Parties desire to enter into this Agreement to set forth their agreements relating to certain matters relating to: (i) the securities of Acorda held by Elan, (ii) amendments to the 1997 Securities Purchase Agreement, the Limited Recourse Note (as defined below), the Full Recourse Note (as defined below), the Acorda Registration Rights Agreement, the Second Closing Warrant and the SSDA (collectively, the “**Amended Finance Documents**”); and (iii) Board observation rights in favor of EIS.

**IN CONSIDERATION OF THE MUTUAL COVENANTS CONTAINED HEREIN, AND OTHER GOOD AND VALUABLE  
CONSIDERATION, THE RECEIPT AND ADEQUACY OF WHICH ARE HEREBY ACKNOWLEDGED, IT IS HEREBY  
AGREED AS FOLLOWS:**

1. **DEFINITIONS**

**Capitalized terms used in this Agreement shall have the same meanings assigned to them in the Termination Agreement , unless such terms are expressly defined to the contrary in this Agreement.**

“**Affiliate**” shall mean any corporation or entity controlling, controlled or under the common control of any other corporation or entity. For the purpose of this definition, (i) “control” shall mean direct or indirect ownership of fifty (50%) percent or more of the stock or shares entitled to vote for the election of directors and (ii) MS R&D shall not be an Affiliate of Elan Corp, EPIL II or EIS.

“**Effective Date**” shall mean the date of this Agreement.

“**Elan**” shall mean Elan Corp and its Affiliates.

“**EPIL II**” shall mean Elan Pharmaceuticals Investment II, Ltd. an exempted limited liability company incorporated under the laws of Bermuda.

**“Force Majeure”** shall mean causes beyond a Party’s reasonable control, including, without limitation, acts of God, fires, strikes, acts or war or terrorism, or intervention of a governmental authority.

**“Full Recourse Note”** shall mean the Full Recourse Convertible Promissory Note dated January 22, 1997 in the principal amount of \$2,500,000 issued by Acorda to EIS.

**“Limited Recourse Note”** shall mean the Limited Recourse Convertible Promissory Note dated January 22, 1997 in the principal amount of \$5,000,000 issued by Acorda to EIS.

**“Party”** shall mean Elan Corp, EIS, Acorda or MS R&D, as the case may be, and **“Parties”** shall mean all such parties together.

**“Second Closing Warrant”** shall mean the Second Closing Warrant to up to 100,000 Shares of the Series B Preferred Stock of Acorda dated February 4, 2007 having an exercise price of \$2.00 per share issued to EIS.

2. **Milestone Purchases.** The Parties hereto acknowledge and agree that none of Elan Corp, EIS, EPIL II or their respective affiliates, subsidiaries, successors or assigns are obligated to purchase additional securities of or from Acorda, or their respective affiliates or subsidiaries, successors or assigns.

3. **Transfer Restrictions.** The Parties hereby agreed to amend the Amended Finance Agreements as set forth hereinbelow:

3.1 **1997 Securities Purchase Agreement**

(a) Section 8.1 of the 1997 Securities Purchase Agreement is hereby amended by changing all references to “50,000 of the Shares” to “2,200,000 of the Shares.” The references to 2,200,000 shares shall be subject to adjustment for stock splits, combinations, reclassifications, and other similar events.

(b) Section 8.2 of the 1997 Securities Purchase Agreement is hereby deleted and replaced with the following:

**“Assignment of Rights to Financial Information.** The rights granted pursuant to Section 8.1 may not be assigned or conveyed by the Purchaser or by any subsequent transferee of such rights without the prior written consent of the Company; provided, however, that the Purchaser and any transferee, after giving notice to the Company, may assign such rights to any transferee that acquires no fewer than 2,200,000 shares of Common Stock (subject to adjustment for stock splits, combinations, reclassifications, and other similar events) (including for purposes of determining the number of shares of Common Stock, any shares of

Common Stock issued or issuable upon conversion or exercise of other securities), other than a transferee that is a Competitor. For purposes of this Agreement, “Competitor” shall mean any party engaged, directly or indirectly, in drug development for therapies for spinal cord injuries or multiple sclerosis.”

(c) Section 10 of the 1997 Securities Purchase Agreement is hereby deleted in its entirety and replaced with the following:

“The Purchaser shall not sell, assign or otherwise transfer any of the Securities to a Competitor without the prior written consent of the Company. In addition and in any event, the Purchaser shall be obligated to comply with all applicable restrictions on transfer under applicable federal and state securities laws.”

3.2 **Limited Recourse Note**

(a) The first proviso of Section 1 of the Limited Recourse Note shall be amended and restated in its entirety to read as follows:

“; provided, however, that if the Board of Directors of the Company reasonably determines that such Regulatory Approval is unlikely to be obtained or shall not be obtained in a timely manner and provides written notice (the “Notice”) thereof to the Holder (a “Board Termination”), then, on the thirtieth day following receipt of the Notice by the Holder (the “Board Termination Date”), the outstanding principal sum remaining on this Promissory Note, together with all accrued and unpaid interest thereon, shall be automatically converted into shares of the Series D Preferred Stock of the Company (the “Series D Preferred”) in accordance with Section 3.2 below effective as of the Board Termination Date, unless the Holder shall have delivered a written notice to the Company prior to the Board Termination Date of its desire to have such amount canceled (the “Cancellation Right”), in which event, such amount shall be canceled as of the Board Termination Date;”

(b) Section 3.1 of the Limited Recourse Note shall be amended to:

- (i) replace the reference to “the Series D Preferred Stock of the Company (the “Series D Preferred”)” with “Series D Preferred”;
- (ii) insert the following parenthetical after reference to \$12.50: “(subject to adjustment for stock splits, combinations, reclassifications, and other similar events)”;
- (iii) amend and restate the first line of the second paragraph of Section 3.1 of the Limited Recourse Note to read in its entirety as follows: “The right and option of the Holder to convert the unpaid principal amount of this Promissory Note into Series D Preferred shall terminate upon the first to occur of: (i) the automatic conversion thereof on the Board Termination Date; and (ii) the payment (or repayment) by the Company of all amounts owing under this

Promissory Note (subject to the notice requirements of Section 2 hereof)."

(c) Section 3.2 shall be renumbered Section 3.3, and all references in the Limited Recourse Note to Section 3.2 (other than as set forth in this Agreement) shall become references to Section 3.3.

(d) A new Section 3.2 shall be inserted into the Limited Recourse Note to read in its entirety as follows:

"Automatic Conversion into Series D Preferred Stock. Subject to the Holder exercising the Cancellation Right in accordance with Section 1 above, immediately prior to the Board Termination Date, the full unpaid principal balance and accrued interest outstanding under this Promissory Note at such time shall be automatically converted into fully paid and nonassessable shares of Series D Preferred at a rate which shall be equal to the quotient obtained by dividing:

(x) the principal amount of this Promissory Note plus all accrued and unpaid interest thereon, by

(y) \$12.50 (subject to adjustment for stock splits, combinations, reclassifications, and other similar events)."

(e) Section 5.7 of the Limited Recourse Note is hereby deleted and replaced in its entirety to read as follows:

"Transfer Restrictions. The Holder shall not sell, assign or otherwise transfer all or any portion of this Promissory Note to a Competitor (as defined below) without the prior written consent of the Company. In addition and in any event, the Holder shall be obligated to comply with all applicable restrictions on transfer under applicable federal and state securities laws. For purposes of this Note, "Competitor" shall mean any party engaged, directly or indirectly, in drug development for therapies for spinal cord injuries or multiple sclerosis.

(f) All references to "Committee Termination" and "Committee Termination Date" shall become references to "Board Termination" and "Board Termination Date."

### 3.3 **Full Recourse Note**

(a) The first clause of Section 1 of the Full Recourse Note shall be amended and restated in its entirety to read as follows:

"If the Holder has not converted the outstanding principal hereunder into Preferred Stock in accordance with Section 3 hereof by the date which is the earlier of (i) the first anniversary after the first Regulatory Approval (as defined below) and (ii) September 30, 2008 (the "Maturity Date"),"

(b) The first proviso of Section 1 of the Full Recourse Note shall be amended to replace the reference to “the Committee (as defined in the License Agreement)” with “the Board of Directors of the Company”.

(c) The following proviso shall be inserted at the end of the first sentence of Section 1 of the Full Promissory Note, immediately prior to the definition of “Regulatory Approval”:

“; provided further, however, if no Regulatory Approval has been received on or prior to the Maturity Date, the Company shall have the right to extend the Maturity Date by six month periods (each, an “Extension Period”) by delivery of a written notice to the Holder certifying that it is the reasonable, good faith belief, after due diligence and inquiry by the Company’s Board of Directors, of the Company that such Regulatory Approval is likely to be obtained in a timely manner (each, an “Extension Notice”), at least 30 days prior to the Maturity Date or the then current Extension Period, as the case may be.”

(d) Section 5.6 of the Full Recourse Note is hereby deleted and replaced in its entirety to read as follows:

“Transfer Restrictions. The Holder shall not sell, assign or otherwise transfer all or any portion of this Promissory Note to a Competitor (as defined below) without the prior written consent of the Company. In addition and in any event, the Holder shall be obligated to comply with all applicable restrictions on transfer under applicable federal and state securities laws. For purposes of this Note, “Competitor” shall mean any party engaged, directly or indirectly, in drug development for therapies for spinal cord injuries or multiple sclerosis.”

(e) All references to “Committee Termination” shall become references to “Board Termination” and all references to “Committee” shall become references to the “Board of Directors of the Company”).

### **3.4 Acorda Registration Rights Agreement**

(a) Acorda hereby agrees that the amendments to the Acorda Registration Rights Agreement set forth in this Clause 3.4 constitute a superseding agreement between Acorda and Elan that does not require the consent of the other parties to the Acorda Registration Rights Agreement.

(b) Acorda agrees that the legend set forth in Section 2(b) of the Acorda Registration Rights Agreement shall be amended and restated to read in its entirety as follows:

“THESE SECURITIES ARE SUBJECT TO CERTAIN RESTRICTIONS ON TRANSFER AS SET FORTH IN AN AGREEMENT BETWEEN THE

(c) Acorda agrees that the restrictions set forth in Section 3 of the Acorda Registration Rights Agreement shall not apply to Elan or its transferees of any Restricted Securities (as defined in the Acorda Registration Rights Agreement); provided, however, Elan agrees to provide written notice to Acorda of any transfer of Restricted Securities to a third party which notice shall set forth the name of the relevant transferee, the date of such transfer and the Restricted Securities transferred and which such notice shall also be accompanied by, if requested by Acorda, at Elan’s expense, an unqualified written opinion of legal counsel who shall and whose legal opinion shall be satisfactory to Acorda, which opinion shall be addressed to Acorda to the effect that the proposed transfer of the Restricted Securities may be effected without registration under the Securities Act of 1933, as amended.

(d) Acorda agrees that the reference to 100,000 shares in Section 13 of the Acorda Registration Rights Agreement shall be subject to adjustment for stock splits, combinations, reclassifications and other similar events.

3.5 **Second Closing Warrant**. The first two sentences of Section 10 (Transfers) of the Second Closing Warrant are hereby deleted and replaced in their entirety with the following:

“This Warrant may be transferred or assigned by the Warrantholder, in whole or in part, subject to compliance by the Warrantholder with all applicable federal and state securities laws, without the prior written consent of the Company; provided, however, any assignee or transferee of this Warrant (“permitted assignee”) shall be required to accept this Warrant subject to all rights and obligations of the Warrantholder as set forth herein.”

4. **Board Observation Right**. Subject to earlier termination as provided herein, as long as Elan holds not less than 2,200,000 shares of Acorda’s outstanding common stock on a fully-diluted basis (subject to stock splits, combinations, reclassifications and other similar events), Elan shall have the right to have an observer (the “Elan Observer”) present at two meetings each year of Acorda’s board of directors, the determination of which meetings to be at Acorda’s sole discretion. The Elan Observer may be excused from any meeting or discussion by the Board of Directors to the extent that the Board may deem it to be inappropriate, in the judgment of the Board, for the Elan Observer to be present during any such meeting or discussion. The out-of-pocket expenses of the Elan Observer with respect to attending such meetings will be reimbursed by Acorda to the same extent that Acorda reimburses such expenses of its Directors. Elan may transfer its right to the Elan Observer to any third party to which it sells, transfers or assigns not less than 2,200,000 shares of Acorda’s outstanding common stock on a fully-diluted basis (subject to stock splits, combinations, reclassifications and other similar events). The observer right provided for herein shall terminate upon the earlier to occur of (i) the closing of an initial public offering of Acorda’s securities or (ii) the date upon which Elan

or its transferee ceases to own five percent (5%) or more of Acorda's outstanding common stock on a fully-diluted basis.

5. **General**

5.1 **Governing law and jurisdiction :**

- (a) This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to conflicts of law principles under the laws of the State of New York.
- (b) For the purposes of this Agreement, the Parties submit to the nonexclusive jurisdiction of the State and Federal Courts of New York.

5.2 **Assignment :**

- (a) Subject to Clause 5.2(b), this Agreement shall not be assigned by any Party without the prior written consent of the others, save that any Party:

- (i) may assign this Agreement in whole or in part and delegate its duties hereunder to its Affiliate or Affiliates without such consent; and
  - (ii) may assign its rights and obligations to a successor (whether by merger, consolidation, reorganization or other similar event) or purchaser of all or substantially all of its assets relating to such Party's technology related to this Agreement, provided that such successor or purchaser has agreed in writing to assume all of such Party's rights and obligations hereunder and a copy of such assumption is provided to the other Parties.

- (b) For the avoidance of doubt, nothing in this Clause 5.2 shall affect the provisions governing assignment of securities set forth elsewhere in this Agreement.

5.3 **Notices :**

- (a) Any notice to be given under this Agreement shall be sent in writing in English by registered airmail, internationally recognized courier or telefaxed to the following addresses:

If to Acorda at:

Acorda Therapeutics, Inc.  
15 Skyline Drive  
Hawthorne, NY 10532

Facsimile:  
Attention: President

If to MS R&D or Acorda,  
with a copy to:

Wilson, Sonsini, Goodrich & Rosati  
650 Page Mill Road  
Palo Alto, CA 94304  
Facsimile: 650-493-6811  
Attention: Douglas Collom

If to Elan and/or EIS at:

Elan Corporation, plc  
Elan International Services, Ltd.  
C/o Elan International Services, Ltd.  
102 St. James Court  
Flatts,  
Smiths FL04  
Bermuda  
Attention: Secretary  
Telephone: 441 292 9169  
Fax: 441 292 2224

or to such other address(es) and telefax numbers as may from time to time be notified by any Party to the others hereunder.

(c) Any notice sent by mail shall be deemed to have been delivered within seven (7) working days after dispatch or delivery to the relevant courier and notice sent by fax shall be deemed to have been delivered upon confirmation receipt. Notice of change of address shall be effective upon receipt.

5.4 **Waiver**. No waiver of any right under this Agreement shall be deemed effective unless contained in a written document signed by the Party charged with such waiver, and no waiver of any breach or failure to perform shall be deemed to be a waiver of any future breach or failure to perform or of any other right arising under this Agreement.

5.5 **Severability**. If any provision in this Agreement is agreed by the Parties to be, or is deemed to be, or becomes invalid, illegal, void or unenforceable under any law that is applicable hereto:

(a) such provision will be deemed amended to conform to applicable laws so as to be valid and enforceable; or

(b) if it cannot be so amended without materially altering the intention of the Parties, it will be deleted, with effect from the date of this Agreement or such earlier date as the Parties may agree, and the validity, legality and enforceability of the remaining provisions of this Agreement shall not be impaired or affected in any way.

5.6     **Further Assurances.** At the request of any of the Parties, the other Party or Parties shall (and shall use reasonable efforts to procure that any other necessary parties shall) execute and perform all such documents, acts and things as may reasonably be required subsequent to the signing of this Agreement for assuring to or vesting in the requesting Party the full benefit of the terms hereof.

5.7     **Successors.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

5.8     **Amendments.** No amendment, modification or addition hereto shall be effective or binding on any Party unless set forth in writing and executed by a duly authorized representative of each Party.

5.8     **Counterparts.** This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute this Agreement.

5.9     **Costs.** Each Party shall bear its own costs and expenses in connection with the transactions contemplated by this Agreement.

5.10    **Force Majeure.** No Party to this Agreement shall be liable for failure or delay in the performance of any of its obligations hereunder if such failure or delay results from Force Majeure, but any such failure or delay shall be remedied by such Party as soon as practicable.

5.11    **Relationship of the Parties.** The Parties are independent contractors under this Agreement. Nothing herein contained shall be deemed to create or establish an employment, agency, joint venture, or partnership relationship between the Parties or any of their agents or employees, or any other legal arrangement that would impose liability upon one Party for the act or failure to act of another Party. No Party shall have any express or implied power to enter into any contracts, commitments or negotiations or to incur any liabilities in the name of, or on behalf of, another Party, or to bind another Party in any respect whatsoever.

5.11    **Entire Agreement.**

(a)     This Agreement, the Amended Finance Documents, the 1998 Securities Purchase Agreement, the Termination Agreement and the Restated Elan License set forth all of the agreements and understandings between the

Parties with respect to the subject matter hereof. There are no agreements or understandings with respect to the subject matter hereof, either oral or written, between the Parties other than as set forth in such agreements and documents.

(b) No provision of this Agreement shall be construed so as to negate, modify or affect in any way the provisions of any other agreement between the Parties unless specifically provided herein and only to the extent so specified.

(c) Other than as expressly set forth herein, the Amended Finance Documents remain in full force and effect and all future references to them shall be deemed to give effect to the amendments set forth herein.

***THE REMAINDER OF THIS PAGE  
HAS BEEN INTENTIONALLY LEFT BLANK.***

**IN WITNESS WHEREOF** the Parties have executed this Agreement.

SIGNED

**Elan Corporation, plc**

**Monksland Holdings BV**

BY: /s/ Klaas van Blanken

BY: /s/ Pieter Bos  
Name: Monksland Holdings BV  
Title: Proxyholder

SIGNED

**Elan International Services, Ltd**

BY: /s/ Debra Buryj  
Name: Debra Buryj  
Title: Vice President

SIGNED

**Acorda Therapeutics, Inc.**

BY: /s/ Ron Cohen  
Name: Ron Cohen  
Title: President & Chief Executive Officer

12

---

**Exhibit 10.32**

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

**Fampridine Tablets (10mg, 15mg, 20mg, 25mg)  
Technical Transfer Program Proposal for  
Commercial Registration**

**For**

**Acorda Therapeutics**

**Proposal No. ELN-FQ-0001-1002-R4**

**Dated: February 26, 2003**

*Confidential*

---

## **TABLE OF CONTENTS**

- 1.0 Project Scope
- 2.0 Environmental, Health and Safety
- 3.0 Analytical Development
  - 3.1 Cleaning Residuals Assay (Method Development and Validation)
  - 3.2 Drug Substance Potency and Related Substance Assay (Method Transfer)
  - 3.3 Drug Substance – Particle Size (Method Transfer)
  - 3.4 Drug Substance – Residual Solvent Assay (Method Verification)
  - 3.5 Drug Substance – Moisture by KF (Verification)
  - 3.6 Drug Product Potency & Related Substance Assay, Two Methods (Method Transfer)
  - 3.7 Dissolution Assay (Method Validation)
  - 3.8 Drug Product – Moisture by KF (Verification)
  - 3.9 Release Testing of the Drug Substance, per Lot
- 4.0 Feasibility Manufacturing
- 5.0 Registration Manufacturing
- 6.0 Stability - Registration
- 7.0 Project Management
- 8.0 Assumptions, Terms and Conditions

Appendix A: Budget Summary

Appendix B: High Level Timeline

## **1.0 Project Scope**

Patheon Inc. (“Patheon”) will perform manufacturing and analytical services in order to manufacture Fampridine Tablets (10mg, 15mg, 20mg, 25mg) for Acorda Therapeutics (“Client”). Analytical methods will be assessed to support the manufacturing program.

The Budget Summary for this proposal is presented in Appendix A.

Patheon will commence the activities described in this proposal following the execution of the Contract by both parties.

Reference standards for Fampridine and impurities and tablet samples will be provided by the Client. Source technical documents (e.g., current Elan methods, validation reports, and master batch records, etc) and an HPLC column for initiation of method familiarization activities will be provided by the Client. Patheon will be responsible for the generation of documentation and protocols required to support methods familiarization, methods transfer, manufacturing studies, and process transfer activities to be performed as part of this proposal. The Client will review and approve all protocols generated by Patheon prior to execution of studies with the exception of the Clean Residuals Assay method. Patheon will provide final reports at key stages in the project, as indicated in this proposal. The Client will review and approve final reports.

## **2.0 Environmental , Health and Safety**

Prior to the commencement of analytical method development, formulation development and manufacturing activities, a thorough review by Patheon of the Environmental, Health and Safety (EH&S) requirements for Fampridine will be completed. The fee assumes the EH&S review will determine that Fampridine can be safely handled at Patheon. A summary report for this evaluation will be provided to the Client.

## **3.0 Analytical Development**

Patheon will perform the required method familiarization, method transfer, method development and/or method validation work required to support the manufacture of Fampridine Tablets. Patheon is responsible for preparing all protocols. The Client will review and approve all protocols prior to execution of the work. Upon completion of individual studies, Patheon will prepare final reports to document results of all studies with the exception of the Clean Residuals Assay method. The Client will review and approve all reports before moving forward with activities that rely on results of the activities that are the subject of a report.

### **3.1 Cleaning Residuals Assay (Method Development and Validation)**

Patheon will develop and validate the test methods required for testing cleaning residuals and swab samples in order to support the manufacturing program. Analytical protocols and report will be prepared by Patheon. The development and validation will challenge the following parameters:

- System Suitability
- Linearity
- LOD
- LOQ
- Recovery / Accuracy
- Repeatability
- Intermediate Precision
- Robustness
- Specificity
- Stability

### **3.2 Drug Substance Potency and Related Substance Assay (Method Transfer)**

Patheon will transfer the test method required for drug substance testing in order to support the manufacturing program. The Client will supply Patheon in advance with the relevant Validation data to allow Patheon to set acceptance criteria for the protocol. Method Transfer protocols will be prepared by Patheon and submitted to the Client for approval prior to execution. A final report documenting the methods transfer results will be prepared by Patheon and submitted to the Client for approval prior to use of the method for release testing. The method transfer will challenge the following parameters:

- System Suitability
- LOD and LOQ
- Specificity
- Repeatability
- Reproducibility
- Robustness

### **3.3 Drug Substance – Particle Size (Method Transfer)**

Patheon will transfer the test method required for drug substance particle size testing in order to support the manufacturing program. The Client will supply Patheon in advance with the relevant Validation data to allow Patheon to set acceptance criteria for the protocol. Method Transfer protocols will be prepared by Patheon and submitted to the Client for approval prior to execution. A final report documenting the methods transfer results will be prepared by Patheon and submitted to the Client for approval prior to use of the method for release testing. The method transfer will challenge the following parameters:

- Reproducibility
- Robustness
- Repeatability

### **3.4 Drug Substance – Residual Solvent Assay (Method Verification)**

Patheon will verify the test method required for drug substance residual solvent testing in order to support the manufacturing program. Analytical protocols will be prepared by Patheon and submitted to the Client for approval prior to execution. A final report documenting the method verification results will be prepared by Patheon and submitted to the Client for approval prior to use of the method for release testing. The method verification will evaluate the following parameters:

- System Suitability
- LOD and LOQ
- Specificity
- Repeatability
- Reproducibility

### **3.5 Drug Substance – Moisture by KF (Verification)**

Patheon will verify the test method (up to 6 samples) required for drug substance moisture testing to ensure the method is precise and accurate in order to support the manufacturing program. Analytical protocols will be prepared by Patheon and submitted to the Client for approval prior to execution. A final report documenting the method verification results will be prepared by Patheon and submitted to the Client for approval prior to use of the method for release testing.

### **3.6 Drug Product Potency & Related Substance Assay, Two Methods (Method Transfer)**

Patheon will perform method familiarization for the methods in advance of methods transfer. A report documenting the method familiarization results will be prepared by Patheon and submitted to the Client for approval prior to commencement of method transfer studies. The client will supply Patheon with the relevant validation data to allow Patheon to set acceptance criteria for the protocol

Patheon will transfer the test methods required for drug product potency and related substances testing in order to support the manufacturing program. It is noted that in addition to testing the coated finished product using Methods 1 and Method 2, a separate HPLC method will be used for the following:

- content uniformity testing,
- assay of the uncoated tablets
- blend homogeneity testing.
- Unit dose testing

Method Transfer protocols will be prepared by Patheon and submitted to the Client for approval prior to execution. Final reports documenting the method transfer results will be prepared by

Patheon and submitted to the Client for approval prior to use of the methods for testing. The transfer will challenge the following parameters:

- System Suitability
- LOD and LOQ
- Specificity
- Repeatability
- Reproducibility
- Robustness

### **3.7      Dissolution Assay (Method Validation)**

Patheon will perform full validation of the method required for testing dissolution of the drug product in order to support the manufacturing program. Analytical protocols will be prepared by Patheon and submitted to the Client for approval prior to execution. A final report documenting the method validation results will be prepared by Patheon and submitted to the Client for approval prior to use of the method for release testing. The validation will be performed according to ICH guideline requirements typically:

- System Suitability
- Linearity & Range
- Accuracy
- Precision (Reproducibility)
- Robustness of dissolution parameters & HPLC Methodology
- Specificity
- Solution Stability

### **3.8      Drug Product – Moisture by KF (Verification)**

Patheon will verify the test method (up to 6 samples) required for drug product moisture testing to ensure that the method is precise and accurate in order to support the manufacturing program. Analytical protocols will be prepared by Patheon and submitted to the Client for approval prior to execution. A final report documenting the method verification results will be prepared by Patheon and submitted to the Client for approval prior to use of the method for release testing.

### **3.9      Release Testing of the Drug Substance , per Lot**

Patheon will test drug substance for receiving and releasing for manufacture as per Client's CoA or as specified by Client instruction.

#### **Note :**

Release testing of the excipients and drug product has been included as "Analytical Support" under each section of the manufacturing.

#### **4.0 Feasibility Manufacturing**

Patheon will manufacture up to three feasibility batches of Fampridine Tablets at the 10mg strength. These batches will be approximately 50 kilograms each and will not be manufactured back-to-back. A protocol to evaluate blend times, tablet press parameters and coating parameters will be prepared by Patheon and submitted to the Client for approval prior to execution of the feasibility study. The protocol will specify a detailed sampling plan and acceptance criteria.

All excipients will undergo complete analytical release testing in compliance with USP/NF (if the Client requires additional testing on the excipients, this will be addressed and costed separately as an amendment to this proposal). Patheon will prepare a master batch record(s), which will be provided to the Client for approval prior to manufacturing and specifies manufacturing procedures and acceptance criteria.

The feasibility batches will not be GMP batches and will not undergo a full QA review; the batches will be bulk packaged. A report documenting the results of the feasibility studies will be prepared by Patheon and submitted to the Client for approval prior to proceeding to the registration batch production phase of this proposal.

Feasibility Manufacturing Process Train (50 kilograms):

- 325L Gallay
- Beta Press
- Vector Lab Coater
- Comil

The following in-process and finished product testing is based upon the described tests.

Blend Analysis

- Blend Homogeneity / uniformity of dosage (total of 10 samples)
- Composite sample Assay
- Flow Properties
- Bulk and Tap Densities (Including one sieve analysis)

Coated Tablet Analysis:

- Appearance
- Weight Variation
- Potency & Related Substances
- Identification
- Dissolution Profile
- Physical Parameters (hardness and friability)
- Moisture (KF)

## Uncoated Tablet Analysis:

- Content Uniformity (As per USP)
- Physical Parameters (Note Weight thickness and hardness will be evaluated as part of in-process monitoring these are performed as part of the process) – hardness and friability
- Appearance
- Moisture (KF)

## 5.0 Registration Manufacturing

Patheon will manufacture twelve registration batches of Fampridine Tablets (three of each tablet strength) that are colored and debossed tablets. These batches will be approximately 50 kilograms each and may be manufactured back-to-back. Processing parameters will be based on recommendations from the feasibility study. All excipients will undergo complete analytical release testing in compliance with USP/NF (if the Client requires addition testing on the excipients, this will be addressed and costed separately as an amendment to this proposal). Patheon will prepare a protocol and provide the protocol to the Client for approval prior to execution of the registration batch production work. The protocol will specify a detailed sampling plan and acceptance criteria. Patheon will prepare master batch records, which will be provided to the Client for approval prior to manufacturing; the batch records will specify manufacturing procedures and acceptance criteria.

The registration batches will be manufactured in accordance with cGMPs and will undergo a full QA review by Patheon. The batches will be packaged as follows by Patheon (packaging configuration split to be determined by Client):

10mg Tablets	HDPE Bottles of 14's and 60's
15mg Tablets	HDPE Bottles of 14's and 60's
20mg Tablets	HDPE Bottles of 14's, 60's and 180's
25mg Tablets	HDPE Bottles of 14's, 60's and 180's

(all packaging configurations will include desiccant, filler and induction seal)

Registration Manufacturing Process Train (50 kilograms):

- 325L Gallay
- Beta Press
- Vector Lab Coater
- Comil

The following in-process and finished product testing will be conducted.

Blend Analysis:

- Blend Homogeneity/uniformity of dosage (total of 10 samples)
- Composite sample assay, appearance, and ID
- Flow Properties
- Bulk and Tap Densities (Including one sieve analysis)

Coated Tablet Analysis:

- Appearance
- Potency & Related Substances
- Identification
- Dissolution Profile
- Physical Parameters (hardness and friability)
- Moisture (KF)
- Uniformity of dosage

Uncoated Tablet Analysis:

- Weight Variation
- Physical Parameters (hardness, and friability)
- Appearance ID
- Moisture (KF)
- Assay

Patheon will provide copies of executed batch records to the Client with the associated completed sampling protocol and summary of results. The Client will review the batch records prior to initiation of registration stability studies by Patheon.

## **6.0 Stability - Registration**

For quoting purposes a non-matrix approach has been suggested to monitor the 30 lots (12 Registration batches, two packaging formats for the 10 and 15mg strengths, and three packaging formats for 20 and 25mg strengths of Fampridine Tablets) as per ICH guidelines.

Additional samples will be stored as contingency samples if required to generate data for long-term stability of the product.

The following storage conditions and test-points are suggested for testing:

- 1, 2, 3 and 6 months for 40 ° C ± 2 ° C / 75% ± 5% RH
- 1, 2, 3, 6, 9, and 12 months for 30 ° C ± 2 ° C / 60% ± 5% RH\*
- 3, 6, 9, 12, 18, 24 and 36 months for 25 ° C ± 2 ° C / 60% ± 5% RH
- Contingency samples at 5 ° C, Ambient RH\*

---

(\* Tested only if required due to significant changes in the next level condition)

The analytical data used for the release of each lot manufactured at Patheon will be considered as initial (T=0) data if samples are placed on stability within 30 days of batch release.

Cost efficiencies for analytical testing have been built into the stability program based upon the number of samples pulled in a given month. The fee for this stability program assumes that all lots will be placed on stability at the same time. If these lots are not placed on stability at the same time, the fee will be adjusted accordingly through an Amendment to Proposal. The number of Pulls and costing is based on the assumption that no testing is required at **30 °C/60%RH**.

Pullpoint Month	1	2	3	6	9	12	18	24	36
Number of Samples Pulled	30	30	60	60	30	30	30	30	30

Therefore, the stability sample breakdown is:

- 0 Single Sample Pullpoints (0 Samples)
- 0 Double Sample Pullpoints (0 Samples)
- 0 More Than Two Sample Pullpoints (0 Samples)
- 0 More Than Five Sample Pullpoints (330 Samples)
- 9 More Than Ten Sample Pullpoints (330 Samples)

The following standard tests are usually performed as part of the Stability Program:

- Potency & Related Substances
- Dissolution Profile
- Physical Appearance
- Moisture
- Hardness
- Friability

This estimate is based on a full ICH program. Patheon will prepare the ICH stability protocol. The protocol will be approved by the Client prior to initiation of the stability studies. Patheon will provide results to the Client for each test interval that has been reviewed by Patheon quality assurance. Patheon will prepare a report at the 3 and 6 month test stations and will prepare reports at every subsequent 6 month test station thereafter (or at each 12 month test interval, as appropriate, based upon the protocol).

There is the possibility to reduce the fees for this work based on the mutual agreement between Patheon and the Client to matrix the testing design. The final cost is to be determined.

## **7.0 Project Management**

Patheon will provide project management support to monitor the progress of the project against established timelines and will update the Client of changes in events. The project manager will coordinate regular biweekly teleconference meetings and quarterly face-to-face meetings. The fee for project management is incorporated in the breakdown of each activity.

## **8.0 Assumptions , Terms and Conditions**

**1. Development Activities :** Patheon shall undertake and perform the product development work described in this Proposal (the “Development Activities”) which when accepted by CLIENT shall become a contract binding on Patheon and CLIENT (the “Contract”). Notwithstanding the foregoing, CLIENT and Patheon acknowledge that certain changes are contemplated in the scope of the Development Activities the details and costs of which will be negotiated at a later date. No changes, deletions or additions to the Development Activities will be considered valid without prior written agreement between CLIENT and Patheon. Patheon shall notify Client, in advance of incurring any costs, when additional development activities by Patheon, beyond the Development Activities set forth in this Proposal, become necessary due to unforeseen events. Patheon shall not perform any additional development activities without CLIENT approval of such related costs.

It is assumed that, based on the information available to Patheon at this time, Patheon can safely perform the Development Activities at its Toronto Region Operations facility. If it is determined by Patheon’s Environmental Health and Safety personnel that any of the active ingredients are a Category III or Category IV compound, an occupational exposure level, then an air sampling method will be required at CLIENT’s expense prior to commercialization. Patheon reserves the right, in its sole and absolute discretion, to conduct an air sampling method on Category I and II compounds, at such price and upon such terms as may be mutually agreed to between the parties prior to commercialization.

**1.1 “Intellectual Property”:** includes, without limitation, rights in patents, patent applications, trade-marks, trade-mark applications, trade-names, confidential information, trade secrets, inventions, copyrights, industrial designs.

**1.2 Grant of Non-Exclusive License to Patheon :** The CLIENT hereby grants to Patheon, for the term of the Contract, a royalty-free, non-exclusive license to use Client’s Intellectual Property for the performance of the Development Activities. The nonexclusive license granted herein shall be limited to Intellectual Property of the CLIENT that is necessary for the performance of the Development Activities and Patheon shall not use such Intellectual Property for any other purpose than performance of the Development Activities. The non-exclusive license shall not include any right not expressly stated hereunder. CLIENT represents and warrants that as of the date of the Contract to the best of its knowledge, without conducting any inquiry, that the Development Activities performed by Patheon will not, to the best of CLIENT’s belief, infringe any Intellectual Property held by any third party.

### **2. Supply of Products :**

(a) CLIENT shall supply Patheon with sufficient bulk quantities of the active ingredients and certain excipients for Patheon’s use in conducting the Development Activities under this Proposal. Such ingredients and excipients shall be supplied by CLIENT at its expense.

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

(b) Patheon shall purchase all other materials required to conduct the Development Activities. CLIENT shall pay Patheon's direct cost thereof plus an additional [\*\*] as a handling charge upon receipt of an invoice detailing such costs. Prior to making any such purchases in excess of [\*\*], Patheon shall obtain CLIENT approval. In addition, Patheon shall obtain prior client approval for each and every purchase of other materials once the total amount invoiced to CLIENT during performance of the Development Activities exceeds [\*\*].

**3. Payment for Service :**

(a) CLIENT shall pay Patheon for the services to be provided during the term of this Proposal in such amounts and in such manner as set forth in this Proposal. All amounts quoted are in USD funds and are valid for sixty (60) days from the date of this Proposal. All amounts quoted are subject to review by Patheon of all product specifications, development reports and, Environmental, Health and Safety assessment. One review with changes is included in the fee for final reports. Any additional changes shall be invoiced separately at the then prevailing hourly rates.

(b) Project specific items, which include but are not limited to special equipment, change parts, excipients, laboratory columns and reagents, tooling etc., obtained by Patheon from third party suppliers as well as services to be provided by any third party suppliers are subject to prior CLIENT approval, and will be billed back to CLIENT upon Patheon's receipt of invoice from any supplier of Patheon. The purchase of project specific items and services are subject to the same prior approval requirements in Section 2 (b) of the Contract.

(c) Each Patheon invoice shall be due and payable within thirty (30) days of the date of such invoice.

**4. Deposit :** Prior to the commencement of any Development Activities by Patheon pursuant to this Proposal, Patheon shall have received from CLIENT a deposit in the amount set out in the Project Summary. This deposit amount will be held by Patheon as a deposit until the Development Activities, as modified from time to time, are fully completed or until this Contract expires or is terminated for whatever reason. The deposit amount shall be credited towards the final invoice for the Project. Patheon may apply this deposit amount against any accounts overdue in excess of 60 days of the date of the invoice. In addition, Patheon may, at its option, suspend all Development Activities until such time the outstanding amounts have been paid in full and the original deposit amount has been replenished.

**5. Term and Termination :** This Contract will take effect on the date of execution and shall continue until completion by Patheon of the Development Activities. Either party may terminate this Contract if the other party is in material breach of any provisions thereof and the breaching party fails to remedy any such breach within thirty (30) days of the notice of such breach by the non-breaching party. Additionally, CLIENT shall have the right to terminate this Contract immediately for any business reason.

In either such case, Patheon shall cease performance of the Development Activities upon termination and CLIENT shall pay to Patheon: (i) any fees and expenses due to Patheon for the

services rendered up to the date of termination; (ii) all actual costs incurred by Patheon to complete activities associated with the termination and close of the Project; and (iii) any additional costs incurred by Patheon in connection with the Project that are required to fulfill applicable regulatory and contractual requirements. Any re-scheduling of the Development Activities requested by CLIENT beyond one hundred twenty (120) days, notwithstanding a request made pursuant to Section 8.8, shall be deemed to be a termination.

All materials and supplies shall be picked up within five (5) business days of termination otherwise, a \$20.00 per square foot per month surcharge will be assessed for storage.

**6. Confidential Information :** All proprietary or confidential information of either party that is disclosed or otherwise made known to the other party as a result of the Development Activities performed under this Contract shall be considered confidential property of the disclosing party (the “Confidential Information”). The Confidential Information shall be used by the receiving party, its employees and external advisors only for the purpose of performing the receiving party’s obligations hereunder. For purposes of this paragraph, Confidential Information shall not be deemed to include any information that is (i) known to the receiving party at the time of the disclosure, as evidenced by its written records prior to disclosure by the disclosing party; (ii) is or becomes available publicly other than as a result of a breach of this Contract by the receiving party, (iii) obtained from a third party lawfully in possession of such information and under no obligation to maintain such information confidential or (iv) independently developed by the receiving party without use of the Confidential Information.

Each party agrees that it will not reveal, publish or otherwise disclose the Confidential Information of the other party to any third party without prior written consent of the disclosing party. However, disclosure of Confidential Information may be made if required by law or by any regulatory or governmental authority to which the receiving party or any of its respective affiliates may be subject, in each case, on prior written notice to the disclosing party, so that the disclosing party may determine whether to seek a protective order or other appropriate remedy. This obligation of confidentiality and non-disclosure shall remain in effect for a period of ten (10) years after the effective date of termination of this Contract.

**7. Inventions, Etc. :** All data, information and Intellectual Property generated or derived by Patheon as a result of Development Activities performed by Patheon under this Contract, to the extent it is specific to the development, manufacture, use and sale of the CLIENT’S product the subject of the Development Activities (“CLIENT’S Product”) shall be and remain the exclusive property of CLIENT. In addition, any data, information and Intellectual Property generated or derived by Patheon through the use of CLIENT’S Intellectual Property that is not a result of the Development Activities performed by Patheon shall be the exclusive property of CLIENT. On the other hand, all data information and Intellectual Property generated or derived by Patheon as a result of Development Activities performed by Patheon under this Contract, which is not specific to the development the development, manufacture, use and sale of the CLIENT’S product and has application beyond the CLIENT’S Product shall be and remain the exclusive property of Patheon. Notwithstanding the foregoing, CLIENT acknowledges that Patheon possesses certain inventions, processes, know-how, trade secrets, other intellectual properties and other assets, including but not limited to, analytical methods, computer technical expertise and

software which have been independently developed by Patheon (collectively “Patheon Property”). CLIENT and Patheon agree that any Patheon Property or improvement thereto which are used, improved, modified or developed by Patheon under or during the term of this Contract, is the product of Patheon’s technical expertise possessed and developed by Patheon prior to or during performance of this Contract and are the sole and exclusive property of Patheon.

**8. Errors and Omissions:** In the event of a material error by Patheon in the performance of the Development Activities, CLIENT shall have the option to request Patheon to (1) repeat the service at Patheon’s own costs provided that CLIENT provides the active ingredient, or (2) reimburse CLIENT for the price for that particular service, excluding the cost of the active ingredient. In any event, Patheon shall not reimburse the amount of the active ingredient.

**9. Indemnification:**

(a) CLIENT shall defend, indemnify and hold harmless Patheon and its affiliates and their respective directors, officers, employees and agents (together with Patheon, the “Patheon Indemnitees”) from and against any and all claims, actions, causes of action, damages, liabilities, expenses including reasonable attorneys’ fees and expenses (collectively, “Losses”) to and in favour of third parties (other than affiliates) resulting from, relating to, or arising from: (i) any breach by CLIENT of any of its obligations under this Contract; and (ii) the Intellectual Property rights of third parties except to the extent such Losses are: (I) determined to have resulted from the negligence or willful misconduct of Patheon; or (2) for which Patheon is obligated to indemnify the CLIENT Indemnitees pursuant to Section 9(b).

(b) Patheon shall defend, indemnify and hold harmless CLIENT and its affiliates and their respective directors, officers, employees and agents (together with CLIENT, the “CLIENT Indemnitees”) from and against any and all Losses resulting from, relating to, or arising from any breach by Patheon of any of its obligations under this Contract except to the extent such Losses are: (i) determined to have resulted from negligence or willful misconduct of CLIENT; or (ii) for which CLIENT is obligated to indemnify the Patheon Indemnitees pursuant to Section 9(a).

(c) Under no circumstances whatsoever shall either party be liable to the other in contract, tort, negligence, or breach of statutory duty for any otherwise for any indirect or consequential damages.

**10. Indemnification Procedures:** In the event that either party seeks indemnification, it shall inform the other party of the claim as soon as reasonably practicable after it receives notice thereof and, shall permit the other party, at that party’s cost, to assume direction and control of the defense of the claim, and shall cooperate as reasonably requested (at the expense of the other party), in defense of the claim. Neither party shall settle or otherwise compromise any claim or suit in any manner that adversely affects that other party hereunder or imposes obligations on the other party in addition to those set forth in this Contract, without prior written consent of the other party, which consent shall not be unreasonably withheld or delayed.

**11. Miscellaneous :** This Contract contains the entire understanding of the parties with respect to the subject matter herein and supersedes all previous agreements (oral and written), negotiations and discussions. The parties may modify or amend the provisions hereof only by an instrument in writing duly executed by both of the parties. Neither this Contract, nor any of either party's rights hereunder, may be assigned or otherwise transferred by either party without the prior written consent of the other party. Any attempt to assign the rights or obligations under this Contract shall be void. This Contract shall be deemed to be made in the State of New York and shall be interpreted and enforced in accordance with the laws of the State of New York, without regard to conflict of law principles. The parties hereby submit to the jurisdiction of the state and federal courts located within the State of New York. The obligation of the parties contained in Sections 6, 7, 8, 9 and 10 shall survive the expiration or earlier termination of this Contract.

Patheon and CLIENT have executed this Contract in duplicate by the duly authorized officers of each party.

**Acorda Therapeutics**

**Patheon Inc.**

By: /s/ Mitchell Katz  
Name: Mitchell Katz, PhD  
Title: Vice President, Clinical Programs  
Date: 3/28/03

By: /s/ Nick A. DiPietro  
Name: Nick A. DiPietro  
Title: President & COO  
Date: 4/7/03

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

## Appendix A: Budget Summary

**THE FOLLOWING COSTS ARE ALL QUOTED IN:** **USD**

### **2.0 ENVIRONMENTAL HEALTH AND SAFETY**

<u>ACTIVITY</u>	<u>PRICE</u>
<b>EH&amp;S Assessment (\$3,000 per active)</b>	[**]

### **3.0 ANALYTICAL DEVELOPMENT**

<u>ACTIVITY</u> <u>SHIFTS</u>	<u>HOURS</u>	<u>PRICE</u>	<u>HOURS</u>	<u>PRICE</u>
<b>3.1 Cleaning Residuals Assay (Method Development and Validation)</b>				
Protocol/benchwork	[**]	[**]		
Final Report	[**]	[**]		
			[**]	[**]
<b>3.2 Drug Substance Potency &amp; Related Substances (Method Transfer)</b>				
Protocol/benchwork	[**]	[**]		
Final Report	[**]	[**]		
			[**]	[**]
<b>3.3 Drug Substance - Particle Size (Method Transfer)</b>				
Protocol/benchwork	[**]	[**]		
Final Report	[**]	[**]		
			[**]	[**]
<b>3.4 Drug Substance - Residual Solvents Assay (Method Verification)</b>				
Protocol/benchwork	[**]	[**]		
Final Report	[**]	[**]		
			[**]	[**]
<b>3.5 Drug Substance - Moisture by KF (Method Verification)</b>				
Protocol/benchwork	[**]	[**]		
Final Report	[**]	[**]		
			[**]	[**]
<b>3.6 Drug Product Potency &amp; Related Substances Assay (Method Transfer)</b>				
Protocol/benchwork	[**]	[**]		
Final Report	[**]	[**]		
			[**]	[**]
<b>3.7 Dissolution (Validation)</b>				
Protocol/benchwork	[**]	[**]		
Final Report	[**]	[**]		
			[**]	[**]
<b>3.8 Drug Product - Moisture by KF (Method Verification)</b>				
Protocol/benchwork	[**]	[**]		
Final Report	[**]	[**]		
			[**]	[**]
<b>3.9 Full Release testing of the Drug Substance (per Lot)</b>				
Protocol/benchwork	[**]	[**]		
Final Report	[**]	[**]		
			[**]	[**]
<b>TOTAL (Analytical Development)</b>			[**]	[**]

#### 4.0 FEASIBILITY MANUFACTURING - OPTIMIZATION BATCHES

ACTIVITY	SHIFTS	HOURS	PRICE	SHIFTS	HOURS	PRICE
Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk*, have been separately filed with the Commission.						
<b>Per Batch:</b> Manufacturing	[**]	[**]	[**]			
Bulk Packaging	[**]	[**]	[**]			
Analytical Support		[**]	[**]			
Project Support		[**]	[**]			
<b>TOTAL (Three Feasibility Batches)</b>	[**]	[**]	[**]	[**]	[**]	[**]

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

## 5.0 REGISTRATION MANUFACTURING

<u>ACTIVITY</u>	<u>SHIFTS</u>	<u>HOURS</u>	<u>PRICE</u>	<u>SHIFTS</u>	<u>HOURS</u>	<u>PRICE</u>
<b>Per Batch:</b>						
Manufacturing		[**]	[**]			
Packaging		[**]	[**]			
Analytical Support		[**]	[**]			
Project Support		[**]	[**]			
<b>First Batch</b>						
<b>11 Additional Batches</b>						
<b>Manufactured Back-to-Back from First Batch</b>						
<i>Cost Savings Per Additional Batch:</i>	3.5	<i>Shifts/</i>	[**]			
<i>Cost Per Additional Batch:</i>			[**]			
<b>OPTIONAL: For 4 Registration Batches Manufacture Back-to-Back the Cost will be \$249,820</b>						
Bulk Hold Time Study (per Strength - one Timepoint)				[**]	[**]	[**]
<b>TOTAL (Registration Manufacturing)</b>			[**]	[**]	[**]	[**]

## 6.0 STABILITY - REGISTRATION

<u>ACTIVITY</u>		<u>HOURS</u>	<u>PRICE</u>
Number of Lots	24		
Total Samples	264		
	<u>Cost per Sample</u>	<u># of Samples</u>	<u>Subtotal</u>
Analytical Support (1 sample per pullpoint)	\$ [**]	0 \$ 0	
Analytical Support (2 samples per pullpoint)	\$ [**]	0 \$ 0	
Analytical Support (2+ samples per pullpoint)	\$ [**]	0 \$ 0	
Analytical Support (5+ samples per pullpoint)	\$ [**]	0 \$ 0	
Analytical Support (10+ samples per pullpoint)	\$ [**]	[**] [**]	
<b>TOTAL (Stability - Validation)</b>		[**]	[**]
<b>BUDGET TOTAL *</b>		<u>USD</u>	[**]
<b>Deposit</b>		\$	[**]

\* The manufacturing cost given in this proposal is based upon the assumption that the drug substance is classified as a high potency material in accordance with Patheon's Categorization System. If it is determined through Patheon's Environmental Health and Safety Review that the drug substance is not categorized as a high potency material, the manufacturing cost will be revised through a Change of Scope to reflect handling charges for a low potency product.

**Appendix B: High Level Timeline**  
**(2 pages)**

The attached High Level Timeline is presented at this stage as a projected estimate of the duration and achievable milestones, based upon Patheon's experience and history. The High Level Timeline should not be taken as part of an agreed legal deliverable of this proposal.

Once the project has been awarded to Patheon and the relevant legal documentation is in place, a revised Timeline detailing set milestones and duration of deliverables will be agreed upon between Patheon and the Client. The revised Timeline would likely have a similar duration and would be based upon resources and the availability of manufacturing time at the initiation of the project.

**Exhibit 10.33**

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

**SYNDICATED SALES FORCE AGREEMENT**

This SYNDICATED SALES FORCE AGREEMENT ("Agreement") is dated as of August 1, 2005 ("Effective Date") by and between Cardinal Health PTS, LLC ("Cardinal Health") with a place of business at 7000 Cardinal Place, Dublin, Ohio, and Acorda Therapeutics, Inc. ("Acorda"), having a principal place of business at 15 Skyline Drive, Hawthorne, NY 10532.

**Background Information**

Acorda develops, distributes and sells pharmaceutical products, and Cardinal Health provides pharmaceutical representatives who Detail (as hereinafter defined) pharmaceutical products for third parties. Acorda desires Cardinal Health to provide representatives to Detail certain products as determined and directed by Acorda in the geographical territory hereinafter specified, pursuant to the terms and conditions of this Agreement, and Cardinal Health desires to provide the Representatives and perform such services pursuant to the terms and conditions set forth in this Agreement.

The parties hereby agree as follows:

**ARTICLE I**  
**DEFINITIONS**

1.1. **Definitions**. The following terms when used in this Agreement shall, except where the context otherwise requires, have the following meanings:

(a) "Act" means the Federal Food, Drug and Cosmetic Act, as amended, and the rules and regulations promulgated thereunder from time to time.

(b) "Adverse Event" or "AE" means any undesirable event or experience associated with the use of the Product(s), whether or not expected and whether or not considered related to or caused by the Product(s), including, but not limited to, an event or experience that occurs in the course of the use of the Product(s) in professional practice, from overdoses whether accidental or intentional, from abuse, from withdrawal, or from a failure of expected pharmacological or biological therapeutic action of the Product(s). This includes but is not limited to data from clinical trials, post-marketing reports, registries, surveys, etc.

(c) "Affiliate" means any corporate or non-corporate business entity that controls, is controlled by, or is under common control with a party to this Agreement. A corporation or non-corporate business entity shall be regarded as in control of another entity if it directly or indirectly owns or controls more than fifty percent (50%) of the voting equity of the other entity, or (i) in the absence of the ownership or control of more than fifty percent (50%) of the voting equity of an entity or (ii) in the case of a non-corporate business entity, if it possesses directly or indirectly, the power to direct or cause the direction of the management and policies of such corporation or non-corporate business entity, as applicable.

---

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

(d) "Agency" means any governmental authority in the Territory with regulatory, enforcement or other oversight, authority or jurisdiction over the Products, the Program, or any of the actions or transactions contemplated by this Agreement, including, without limitation, the FDA.

(e) "Authorized Request" means a request received on a sample request form conforming with all of the requirements of the PDMA, including bearing the requester's verified name, address, professional title, State license or authorization number (or Drug Enforcement Administration number, as applicable) and telephone number, together with the date of the request and the name of the product, strength and quantity to deliver (which information has been verified by a subcontractor of Cardinal Health with the appropriate State authority to confirm that the Target Customer requesting the drug sample is licensed or authorized under State law to prescribe the product).

(f) "Contract Year" shall refer to each 12 month period beginning, with respect to the First Contract Year, on the Program Launch Date, and with respect to all subsequent Contract Years, on the anniversary date of the Program Launch Date of this Agreement.

(g) "Detail" means an interactive, face-to-face visit by a Representative with a Target Customer or his or her legally empowered designee in the Territory, during which the Product(s), including its FDA-approved indicated uses, safety, effectiveness, contraindications, side effects, warnings and other relevant characteristics of the Product(s) (as defined herein) are described by the Representative in a fair and balanced manner consistent with the requirements of all Laws and SOPs (each as defined herein), and using, as necessary or desirable and to the extent available, the Product Labeling (as defined herein), the Product Promotional Materials (as defined herein) and the Product samples. "Product Detail" means Detail of a Product between Target Customer and Representative. When used as a verb, "Detail" or "Detailing" shall mean to engage in a Detail as defined in this Section 1.1(g).

(h) "FDA" means the United States Food and Drug Administration and any successor agency having substantially the same functions.

(i) "Laws" means any and all federal and state laws, statutes, codes, rules regulations, policies and guidelines applicable to the Program, the Product(s), the performance of the Detailing and the other services and obligations under this Agreement and the transaction contemplated hereby, including but not limited to the Act, the PDMA, the PhRMA Code, the Medicare and Medicaid Anti-Kickback Act (42 U.S.C. § 1320a-7b(a)), the Civil False Claims Act (31 U.S.C. § 3729(a)), Sections 1128A, 1128B, and 1877 of the Social Security Act (42 U.S.C. §§ 1320a-7a, -7b, and 1395nn), the Health Care Fraud Act (18 U.S.C. § 1347), the Criminal False Claims Act (18 U.S.C. § 287) and the American Medical Association Gifts to Physicians from Industry Guidelines, each as amended from time to time and including all regulations, rules, policies and guidelines promulgated thereunder.

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

(j) "Manager" means an individual hired by and retained as an employee of Cardinal Health to supervise activities of Representatives under this Agreement, including district sales managers, regional sales directors, a national sales director, and a project manager.

(k) "PDMA" means the Prescription Drug Marketing Act of 1987, as amended, and the rules and regulations promulgated thereunder from time to time.

(l) "PhRMA Code" means the Code on Interactions with Healthcare Professionals, as adopted by the Pharmaceutical Research and Manufacturers of America, as amended from time to time.

(m) "Primary Detail" means a Detail in which a particular product is the first product to be detailed during a visit to a particular Target Customer.

(n) "Product" means each of the pharmaceutical products to be Detailed by Representatives and marketed by Acorda as set forth on attached Schedule 1.1(n) and such other products as may be mutually agreed between the parties and added to Schedule 1.1(n) attached hereto.

(o) "Product Labeling" means all labels and other written, printed, or graphic matter provided by Acorda to accompany or be included in each package of the Product including without limitation (i) any container or wrapper utilized with a Product, or (ii) Product package inserts.

(p) "Product Promotional Materials" means all written, printed or graphic material provided by Acorda, including Product Labeling, intended for use by Representatives during a Detail, including visual aids, file cards, premium items, clinical studies, reprints, drug information updates and any other promotional support items that Acorda deems necessary or appropriate to conduct the Program. Product Promotional Materials shall include materials describing FDA-approved indicated uses, safety, effectiveness, contraindications, side effects, warnings and other relevant characteristics of a Product. Acorda shall have the right from time to time to add, remove or replace items in the collection of Product Promotional Materials upon written notice of such change to Cardinal Health.

(q) "Program" means the program of Detailing to be conducted by the Representatives pursuant to this Agreement and during the Term of this Agreement, as defined in Section 14.1.

(r) "Program Launch Date" means the first Monday following completion of the Acorda Training Program (as defined in Section 6.1).

(s) "Representative" and "Representatives" mean an individual hired by and retained as an employee of Cardinal Health to conduct Detailing of Products in connection with the Program. As sometimes used in this Agreement, "Representatives" shall also include "Managers" if the context so requires.

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

(t) "SOPs" mean all of the combined standard operating procedures and policies of Cardinal Health that are applicable to the Program, the Product(s), the performance of the Detailing, the other services and obligations under this Agreement and all of the transactions contemplated hereby (including but not limited to policies and procedures designed to ensure compliance with all Laws); provided, however, that for purposes of this Agreement, any and all Written Instructions agreed upon by the parties pursuant to and as defined in Section 2.3(e) of Article II, shall be binding upon Cardinal Health and accorded the same force and effect as if they were incorporated within the definition of SOPs hereunder.

(u) "Sub-Territory" shall mean any portion of the Territory served by the Representatives as of the Effective Date of the Agreement or otherwise agreed upon by the parties.

(v) "Target" or "Target Customer" means a physician in the Sub-Territories within the Family Practice, General Practice, and/or Internal Medicine Physician target audience as identified from time to time by Acorda during the Term of this Agreement.

(w) "Territory" means the states and territories of the United States of America, as divided into the Sub-Territories.

(x) "Year One" means the 12-month period commencing on August 1, 2005 and ending on July 31, 2006.

(y) "Year Two" means the 12-month period commencing on August 1, 2006 and ending on July 31, 2007.

## **ARTICLE II** **APPOINTMENT OF CARDINAL HEALTH; GENERAL SCOPE OF ACTIVITIES**

### **2.1. Detailing.**

(a) **Targeted Customers**. Cardinal Health shall use its syndicated sales force of 162 Representatives to engage in Product Detail activities in the Territory. Cardinal Health shall assign Representatives for each of the 4,000 Target Customers, in such numbers, and in such Sub-Territories as shall be designated by Acorda from time to time during the Term of this Agreement. Each Representative shall make Product Details on his or her assigned Target Customers based on the general direction given by Acorda's management team and as mutually agreed to by Cardinal Health. If requested by a Target Customer, Representatives shall be authorized to provide samples of the Product(s) in accordance with Article VII. Unless otherwise agreed to by the parties in writing, all Details of the Product will be Primary Details. In addition, the Representatives shall not be permitted during the Term of this Agreement to Detail any products competing with Acorda's Product(s) to any of the Target Customers. The appointment of Cardinal Health by Acorda under this Agreement is on a non-exclusive basis and Acorda shall at all times retain the right to promote the Product(s) by whomever, wherever, to whomever and by whatever method it chooses.

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

2.2. Managers. Cardinal Health will provide an adequate number of Managers as mutually agreed upon by the parties prior to the execution of this Agreement to supervise the activities of Representatives.

2.3. Scope of Activities. The parties shall perform the following activities in connection with the Program:

(a) Cardinal Health shall have sole and exclusive authority to discipline or terminate the employment of Cardinal Representatives and the Managers. At Acorda's request, Cardinal Health shall cause any Cardinal Representative to immediately cease Detailing the Product based on substantial non-performance or non-insignificant compliance violations as evidenced in performance evaluations or a finding of non-compliance with the terms of this Agreement (including but not limited to, failure to follow Detailing procedures, to comply with Laws or SOPs, or to follow Acorda's Written Instructions). Cardinal shall either substitute a new Representative to replace any disqualified Representative or re-assign the Sub-Territory of other Representatives in order to ensure that the Target Customers of any disqualified Representative are Detailed by other Representatives. Cardinal shall ensure that no substitute Representative shall commence Detailing without completing the training required under Article VI.

(b) Cardinal Health shall cause each Representative and Manager to attend and successfully complete the Acorda Training Program (as defined in Section 6.1) (including but not limited to training sessions to be conducted by Acorda for each of the Product(s)) and pass the proficiency test specified in Section 6.1(b), prior to participating in the Program. Cardinal shall be responsible for ensuring that any Representative or Manager who has not successfully completed all such training requirements shall not Detail the Product(s) or supervise the sales force (as applicable).

(c) Cardinal Health's district Managers shall periodically accompany Representatives on Details, conduct field evaluations of the Representatives and the Program, including time supervision, Territory management and reporting, and provide a copy of all such evaluations to Acorda's coordinator of the Program (or other Acorda representative). At Acorda's request, Cardinal Health shall be available to discuss the evaluations with Acorda, and permit an Acorda representative to accompany the Representatives on Details.

(d) At the request of Cardinal Health, Acorda shall provide Cardinal Health, without cost, with Product Promotional Materials for the performance and supervision of Detailing. In light of the at risk fee arrangement contemplated by this Agreement, Acorda shall use its reasonable commercial efforts to maintain and supply Product Promotional Materials for the Representatives to perform Details in accordance with the SOPs. For avoidance of doubt, Acorda shall be deemed to have used reasonable commercial efforts as described in the preceding sentence if its failure to maintain and supply Product Promotional Materials arises from problems in the production or delivery of Product Promotional Materials or delay in or lack of approval by a third party, including, without limitation, FDA. Acorda shall be solely responsible for the preparation, content and method of distribution of the Product Promotional Materials. Acorda or its distributor shall be responsible for distributing the Product samples

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

directly to the Representatives, as described in Article VII. In connection with the Detailing of the Product(s), the Representatives shall use only the Product Promotional Materials provided by Acorda; and under no circumstances shall Cardinal Health or the Representatives develop, create, or use any other promotional material or literature, or materials or other promotional materials of any kind, for the Detailing of the Product(s). Acorda will coordinate with Cardinal Health to replenish supplies of Product Promotional Material when depleted. Acorda shall advise Cardinal Health immediately of any inaccuracy or incompleteness of the Product Promotional Materials, and upon such notice Cardinal Health and the Representatives shall immediately cease the use of any portion or all of the Product Promotional Materials so identified by Acorda, and either destroy or return such Product Promotional Materials to Acorda, at Acorda's instruction and expense.

(e) Cardinal Health shall instruct the Representatives to limit their verbal statements and claims regarding the Product(s), including but not limited to statements regarding efficacy and safety, to those authorized by Acorda (as specified during the Acorda Training Program) and that are consistent with the Product Promotional Materials. The Representatives shall not add, delete or modify Acorda's approved claims of efficacy or safety in the Detailing of the Product(s), nor make any changes (including underlining or otherwise highlighting any language or adding any notes thereto) in the Product Promotional Materials. Representatives shall not make any disparaging, untrue or misleading statements about Acorda or any of its Affiliates, employees, competitors or competing products, or intentionally omit to make any statement necessary to avoid making any such statement false or misleading. Representatives shall Detail the Product(s) in strict adherence to all Laws, SOPs and all written instructions agreed upon by the parties in writing at any time during the course of the Program, whether presented during the Acorda Training Program (as defined below), during any follow-up training, or at any other time (collectively, the "Written Instructions"). Cardinal Health shall not unreasonably withhold or delay its approval and implementation of any reasonable written instructions proposed by Acorda and, in the case of instructions that relate to the Product, Cardinal Health shall timely implement all reasonable written instructions proposed by Acorda. Acorda shall ensure that all the Written Instructions comply with all applicable Laws; Cardinal Health shall ensure that all SOPs comply with all applicable Laws.

(f) The Representatives shall remain under the direct authority and control of Cardinal Health, but shall cooperate with Acorda and shall follow the advice and direction related to Detail activities on the Product(s) from Acorda and Cardinal Health mutually. Acorda shall make all decisions with respect to the overall strategy in connection with the Detailing of the Product(s) to the Target Customers. Any Acorda personnel interacting with Cardinal Health Representatives shall not discipline the Representatives or implement terms or conditions of employment or personnel policies and/or practices with respect to the Representatives or otherwise control the daily activities of Representatives.

(g) Cardinal Health shall at its sole cost and expense supply Representatives and Managers with fleet vehicles for their use in performing and supervising the Detailing. Acorda shall reimburse Cardinal Health for all reasonable out-of-pocket costs and expenses of Representatives and Managers in connection with Acorda Training Program and the POA meetings (as defined in Article VI) if such programs and meetings have been approved in

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

advance in writing by Acorda. Acorda and Cardinal Health shall establish a mutually acceptable budget for the costs and expenses referenced in this subparagraph 2.3(g) for each Sub-Territory, and Cardinal Health shall obtain prior written approval for any such costs or expenses that exceed the budget.

(h) Acorda shall periodically provide Cardinal Health with data on Product sales in the Territory during the Term as of this Agreement for Cardinal Health's use in performing this Agreement. Acorda shall also provide Cardinal Health with such other sales and marketing information concerning the Product(s) as Acorda shall deem appropriate, in its sole discretion. Any information which Acorda elects to share with Cardinal Health under this Section 2.3(h) shall be limited to provision of such information only to the extent allowable under Acorda's agreements with third parties providing such information to Acorda. All information provided by Acorda, its officers, agents or representatives shall be deemed Confidential Information belonging to Acorda and shall be treated in accordance with Article 13 hereof.

(i) Unless otherwise approved in writing by Acorda, the Representatives and Managers shall not invite any Target Customer, or any member of his or her staff or any other health care professional, to any promotional or educational events or activities, or provide any meals, trips or entertainment, or provide any gifts or remuneration in any form, kind or amount to any of them. In the event Acorda hereafter authorizes the Representatives as a group to engage in such promotional or educational activities, Acorda shall so inform Cardinal Health in writing and establish policies, guidelines, training requirements and budgets that must be observed in conducting such activities and agreed to by Cardinal Health.

2.4. Orders for Products. Acorda shall be solely and exclusively responsible for establishing the terms and conditions of the sale of the Product(s), including without limitation, the price at which the Product(s) will be sold, whether sales of the Product(s) will be subject to any discounts, the method of distribution of the Product(s), and whether any credit will be granted or refused in connection with the sale or return of any Product(s). Acorda shall be exclusively responsible for accepting and filling all purchase orders for the Product(s), billing and returns for the Product(s), and all other activities in connection with the sale and delivery of the Product(s), other than Detailing. If Cardinal Health or the Representatives receive an order for the Product(s) or are informed that any entity that wishes to place an order, they shall immediately transmit such order or request to Acorda for further handling and communications with the submitter of the order or request, including acceptance or rejection, which shall be in Acorda's sole discretion.

## 2.5. Representatives' Activity.

(a) Subject to Acorda's obligations and representations and warranties in this Agreement, any breach of the terms of this Agreement on the part of the Representatives or Managers (both individually and as a group) shall be deemed to be a breach of this Agreement by Cardinal Health. Notwithstanding the foregoing, any acts or omissions of the Representatives or Managers pursuant to the direction, control or supervision of Acorda or its employees or

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

agents shall not be deemed to be negligent or wrongful acts or omissions of Cardinal Health that constitute a breach of this Agreement.

(b) Each party shall notify the other in writing as promptly as practicable of any such alleged breach on the part of the Representatives or Managers of which it becomes aware. Acorda shall provide Cardinal Health with a reasonable opportunity to remedy such breach to the extent provided in Section 14.4.

2.6. Vacancies/Turnover. In the event of a Representative vacancy due to resignation, reassignment or termination of a Representative, Cardinal Health shall use its best efforts to fill any such vacancy within a six (6) week period. Due to the fee structure under this Agreement, the agreed-upon Service Fees (as defined below) will not be reduced by any Representative vacancy, provided that all missed Details are made up within a reasonable period of time. In the event any such vacancy continues for longer than six (6) weeks, Cardinal Health shall reassign Representatives to ensure that no more than six (6) weeks passes between Details of any Target Customer as a result of any such vacancy.

2.7. Management Reports. Cardinal Health shall provide Acorda with written monthly and other reports in the form and substance as reasonably agreed to by the parties, including but not limited to those set forth in Schedule 2.7. Such reports shall be provided within fifteen (15) days after the end of the period covered by such report or as otherwise mutually agreed to by the parties. At the request of Acorda, Cardinal Health shall furnish Acorda at reasonable times such documentation as Acorda reasonably requests for purposes of verifying the accuracy of any report. Cardinal Health shall also provide Acorda with periodic oral reports including but not limited to weekly conference calls and Manager's reports.

2.8. Project Manager. Cardinal Health shall appoint a project Manager to serve as a liaison between Cardinal Health, Representatives and Acorda regarding the performance by Cardinal Health, the Representatives and Acorda of their respective obligations under this Agreement.

### ARTICLE III COMPENSATION

3.1. Amount and Time of Payment. Subject to the achievement of certain gross sales receipts for the Product(s) during the Term of this Agreement, as further described in Schedule 3.1, Acorda shall pay to Cardinal Health the fees set forth in Schedule 3.1 attached hereto and incorporated by reference (the "Services Fee"), which shall be payable as set forth in the payment schedule set forth therein.

3.2. Reimbursement of Expenses. All expenses of Cardinal Health for which Acorda is obligated to reimburse Cardinal Health under Schedule 3.1 subsection "Direct Pass Through Costs" of this Agreement, including but not limited to reasonable costs and expenses in connection with Acorda Training Program and the POA meetings under Section 2.3(g), shall be paid by Acorda within thirty (30) days after Cardinal Health has submitted a statement to Acorda itemizing such expenses with reasonable supporting documentation and original receipts.

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

## **ARTICLE IV** **REPRESENTATIONS, WARRANTIES AND COVENANTS**

4.1. **By Cardinal Health.** Cardinal Health represents, warrants, and covenants to Acorda, on behalf of itself and each of its Representatives and Managers, as of execution of this Agreement and during the term of this Agreement, as follows:

- (a) that Cardinal Health and the Representatives shall perform the Detailing, supervisory, reporting and Product sample-related services in a professional and timely manner;
- (b) that Cardinal Health shall comply with all Laws and SOPs in conducting the Program and performing its services and obligations under this Agreement;
- (c) when on Acorda's premises or on the premises of Acorda's clients or any Target Customer, Cardinal Health and the Representatives shall comply with all of Acorda's or such client's or Target Customer's policies regarding the conduct of visitors of which Cardinal Health (including the Representatives and Managers) are aware;
- (d) that Cardinal Health is under no obligation to any third party that would prevent the execution of this Agreement or interfere with its performance under this Agreement, and it agrees promptly to inform Acorda of any event or change in circumstances which may reasonably be expected to negatively affect Cardinal Health's ability to perform its obligations hereunder in the manner contemplated by the parties;
- (e) that neither Cardinal Health nor any Representative or Manager has been debarred pursuant to the Act, been excluded from participating in a federal health care program, including without limitation the Medicare or Medicaid programs, or otherwise been disciplined, censured or fined by any federal or state Agency; and if hereafter any of them is subsequently debarred under the Act, excluded from a federal health care program or disciplined, censured or fined, or if any of them receive notice of any pending proceeding in which such debarment, exclusion, discipline, censure or fine could be imposed, Cardinal Health agrees immediately to notify Acorda thereof; and
- (f) Cardinal Health shall neither disclose to Acorda, nor induce Acorda to use any secret or confidential information or material belonging to third parties.

4.2. **By Acorda.** Acorda represents, warrants, and covenants to Cardinal Health, as of execution of this Agreement and during the term of this Agreement, as follows:

- (a) that Acorda is under no obligation to any third party that would prevent the execution of this Agreement or interfere with its performance under this Agreement, and it agrees promptly to inform Cardinal Health of any event or change in circumstances which may reasonably be expected to negatively affect Acorda's ability to perform its obligations hereunder in the manner contemplated by the parties;

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

(b) that Acorda shall comply with all Laws and SOPs with respect to the manufacture and use of the Product(s) and their sale and Acorda's performance of its obligations under this Agreement;

(c) that the Product Promotional Materials are not false or misleading, and are in compliance with the Act and all rules and regulations of the FDA;

(d) to the knowledge of Acorda, the manufacture, sale and distribution of the Product(s) do not and will not during the Term of this Agreement, infringe any valid patent or other proprietary rights of third parties, and the Product(s) have all necessary governmental approvals and may be lawfully Detailed by Cardinal Health and sold by Acorda; and

(e) that Acorda has not been debarred pursuant to the Act, been excluded from participating in a federal health care program, including without limitation the Medicare or Medicaid programs, or otherwise been disciplined, censured or fined by any federal or state Agency; and if hereafter Acorda is subsequently debarred under the Act, excluded from a federal health care program or disciplined, censured or fined, or if Acorda receives notice of any pending proceeding in which such debarment, exclusion, discipline, censure or fine could be imposed, Acorda agrees immediately to notify Cardinal Health thereof.

## **ARTICLE V** **STATUS OF CARDINAL HEALTH AND THE REPRESENTATIVES**

5.1. Cardinal Health Independent Contractor. The relationship of Cardinal Health to Acorda hereunder is strictly as an independent contractor. Representatives and Managers of Cardinal Health performing services hereunder shall not be, and shall not be considered to be, employees of Acorda for any purpose, and shall at all times remain employees of Cardinal Health. Neither party shall have any responsibility for the hiring, termination, compensation, benefits or other conditions of employment of the other party's employees.

5.2. No Acorda Benefits. The Managers and Representatives are not eligible to participate in any benefits programs or sales bonuses offered by Acorda to its employees, or in any pension plans, profit sharing plans, insurance plans or any other employee benefit plans offered from time to time by Acorda to its employees, provided that the Representatives shall be eligible to participate in Acorda incentive programs if so requested by Acorda and approved by Cardinal Health. Cardinal Health acknowledges and agrees that Acorda does not, and will not, maintain or procure any worker's compensation or unemployment compensation insurance for or on behalf of the Managers or Representatives. Cardinal Health acknowledges and agrees that it shall be solely responsible for paying all salaries, wages, benefits and other compensation which its employees (including Representatives and Managers) may be entitled to receive in connection with the performance of the services hereunder and otherwise.

5.3. Sales, Use and Excise Taxes. If any state or local government or other taxing authority determines that sales, use or excise Taxes ("Taxes") (excluding income and employee related taxes, withholding and contributions) are applicable to Cardinal Health's performance hereunder, Cardinal Health shall promptly accrue and Acorda shall pay such Taxes on behalf of

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

Cardinal Health to the appropriate taxing authorities, provided that Acorda shall have the right to challenge the applicability or amount of such Taxes and Cardinal Health will cooperate with any such challenge. In addition, Acorda shall be responsible for the payment of any applicable Taxes related to Acorda's supply to Cardinal Health of Product Promotional Materials and Product Samples.

5.4. No Joint Venture. Nothing contained in this Agreement shall be construed as creating a joint venture or, as granting to either party the authority to bind or contract any obligations in the name of or on the account of the other party or to make any guarantees or warranties on behalf of the other party.

## **ARTICLE VI** **TRAINING**

6.1. Training Programs.

(a) Acorda shall provide on-line and/or home study materials to the Managers and Representatives as well as conduct a national training program for the Representatives and Managers prior to the commencement of the Program, each of which shall include such medical, technical and related legal and regulatory information about the Product(s) and such training to familiarize the Representatives and Managers with Acorda's specific sales strategies and guidelines, if any (to the extent different from those of Cardinal Health) as Acorda deems necessary and appropriate (collectively, the "Acorda Training Program"). Cardinal Health shall be responsible for ensuring that all Managers and Representatives have been trained with respect to the SOPs, general legal and regulatory compliance programs, training relating to sales of pharmaceutical drugs, general sales and promotion techniques and strategies, and Adverse Event (as defined in Article XI) reporting (collectively, the "Cardinal Health Training Requirements"). Cardinal Health shall arrange for all Representatives and Managers to have successfully passed the Cardinal Health Training Requirements prior to the completion of the Acorda Training Program. Cardinal Health shall assist Acorda with the Acorda Training Program only to the extent requested by Acorda. In addition to the foregoing, Cardinal Health and Acorda shall jointly develop a plan of action ("POA") covering the sales strategy to be implemented in the Program, and conduct joint presentations and meetings with the Representatives and Managers with respect thereto. After the commencement of the Program, Acorda and Cardinal Health shall cooperate in order to ensure that all replacement Managers and Representatives who join the Program after its Launch Date shall complete all training required under this Article VI.

(b) In order to qualify for assignment in a Sub-Territory, a Representative must demonstrate thorough knowledge of the Product(s) by passing Acorda's approved Product(s) tests at a level of proficiency acceptable to Acorda and agreed to by Cardinal Health.

6.2. Acorda Assistance. During the term of this Agreement, Acorda shall make available to Cardinal Health, free of charge, a number of Acorda's sales training and marketing personnel (as deemed reasonably appropriate by Acorda) to assist Cardinal Health's Representatives and Managers with respect to the Training Program and additional orientation and any ongoing training for the Representatives and Managers.

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

## **ARTICLE VII** **SAMPLES**

7.1. **Provision of Samples**. If requested by a Target Customer, the Representatives shall be authorized to provide Product samples during a Detail pursuant to an Authorized Request. Acorda or its distributor shall provide samples of the Product(s) to the Representatives in accordance with Acorda's directions relating to sampling. Acorda shall determine the quantity and types of samples to be provided to the Representatives, and the method and schedule of distribution of the samples (including but not limited to any applicable per physician sample limits), and provide Written Instructions related thereto, as necessary. The Representatives shall be solely responsible for managing the storage, handling and distribution of the samples to the Target Customers and for requesting additional samples to replenish their supplies. Cardinal Health shall be responsible for preparing periodic, collective sample requisition requests covering all of the Representatives' sampling supplies, and for paying all of the costs for the storage, handling, distribution and other related costs relating to the samples. All samples shall be stored and handled by Acorda and the Representatives in compliance with the PDMA and all other Laws, SOPs and Acorda's Written Instructions. Acorda shall cooperate with the Representatives to replenish Product sample supplies when depleted; provided however, that Acorda's failure for any reason to supply Product samples shall not be a breach of Acorda's obligations under this Agreement, nor shall it excuse Cardinal Health from conducting Product Detailing as required under this Agreement.

7.2. **SOPs and Sample Accountability Program**. Cardinal Health has established and shall maintain internal SOPs relating to drug sampling which shall ensure that all of its Representatives receive, store, handle, track and distribute drug samples in compliance with Laws (including but not limited to the PDMA) and with prudent management practices. The SOPs comply with all Laws and include, among other things, its Sample Materials Distribution Instructions and sample accountability program. Cardinal Health shall conduct ongoing training of its Representatives and Managers to familiarize them with its SOPs, and monitor their compliance therewith. The SOPs (including the sample accountability program) require, among other things, compliance with the following procedures:

- (a) all samples are stored and handled in a clean, secure environment at room temperature (or as otherwise required by Product Labeling);
- (b) Cardinal Health maintains appropriate inventory tracking records and controls;
- (c) all damaged, expired or shop-worn samples are returned or destroyed (at Acorda's instruction);
- (d) Acorda and its distributor are informed in writing within 72 hours of receipt of any sample shipment that contains damaged, expired, unusable or missing items (specifying the number of such affected items);

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

- (e) Cardinal Health and its Representatives distribute samples only upon receipt of an Authorized Request;
- (f) Cardinal Health and its Representatives maintain sample distribution records, including retaining a hard copy of each Authorized Request bearing the requestor's signature, as well as a copy of the corresponding receipt of the sample (recording the name, address, professional title and signature of the person receiving the sample);
- (g) Cardinal Health and its Representatives monitor all Authorized Requests in order to ensure that no practitioner receives (whether pursuant to one or more requests) an aggregate number of samples in excess of any monthly or other limitation imposed by Law, or any SOP; provided that Acorda will be contacted on a case-by-case basis if a request is received which, if fulfilled, would exceed any such applicable limit, and Acorda's instructions followed with respect thereto;
- (h) Cardinal Health and its Representatives refrain from selling or trading, or offering to sell or trade, any samples;
- (i) Cardinal Health uses its best efforts to maintain a 100% sample request-to- inventory reconciliation; and
- (j) Cardinal Health generates quarterly reports for Acorda (in form and content agreed to by the parties), containing at a minimum the information specified under "Sample Inventory Report" in Schedule 2.7, and conducts monthly sample reconciliations to be reported on a quarterly basis within 30 days of the end of the quarter.

7.3. Ownership; Return of Samples. Cardinal Health acknowledges and agrees that Acorda's delivery and consignment of Product samples to Cardinal Health and the Representatives does not constitute transfer of ownership therein, and that Acorda shall retain title to all samples until such time as they are legally distributed to a Target Customer. Cardinal Health further agrees that, within 30 days following the termination or expiration of this Agreement, or within 30 days from the termination or removal from the Program of a Representative (unless such Representative has been hired or retained by Acorda), or upon Acorda's request at any time during the Term, Cardinal Health shall return, and cause the Representatives to return, to Acorda any unused Product samples provided to Cardinal Health by Acorda or its designated distributor. Acorda shall pay or reimburse Cardinal Health for all costs and expenses in connection with the storage and shipment of returned samples.

## **ARTICLE VIII** **TRADEMARKS AND INTELLECTUAL PROPERTY RIGHTS**

The Product(s) shall be Detailed by Cardinal Health's Representatives under trademarks and logos owned by or licensed to Acorda or an Affiliate of Acorda. This Agreement does not constitute a grant to Cardinal Health of any license, property right or interest in the Product(s) or any materials comprising part of the Acorda Training Program, or any trademarks or other intellectual property right which Acorda or an Affiliate of Acorda owns or uses with respect to

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

the Product(s), the Acorda Training Program, or to the name or business style of Acorda. Cardinal Health and the Representatives shall use the Acorda Training Program materials and the Product Promotional Materials only for the purposes of this Agreement, and all copyright and other intellectual property rights in the Acorda Training Program materials and the Product Promotional Materials shall remain with Acorda.

## **ARTICLE IX** **COMMUNICATIONS; MONITORING THE PROGRAM**

9.1. **Communications from Third Parties**. Except as provided under Article XI hereof, Cardinal Health and its Representatives shall use their best efforts to promptly advise Acorda of all comments, statements, requests and inquiries of any Target Customer, the medical profession or any other third parties relating to either the Program or the Product(s) that are not otherwise addressed by the Product Promotional Materials (“Third Party Communications”), of which Cardinal Health (including the Representatives and Managers) becomes aware. All responses to such Third Party Communications shall be handled solely by Acorda, in its sole judgment. Cardinal Health shall provide reasonable assistance to Acorda to the extent requested by Acorda, and at Acorda’s cost and expense, to fully respond to such Third Party Communications.

9.2. **Government Agencies**. Cardinal Health shall notify Acorda of all communications received by it or any Representative or Manager from any government Agencies, including but not limited to the FDA, concerning the Product(s) or the Program (and including without limitation, communications relating to any AE or other safety issue) (“Agency Communications”) within twenty-four hours of receiving such communication, by transmitting any written documentation and/or a written synopsis of any oral discussion, to a person designated by Acorda for such purpose. All responses to any Agency Communication shall be the sole responsibility of Acorda and handled by it in its sole judgment. Cardinal Health shall assist Acorda with respect to responding to such Agency Communications to the extent requested by Acorda, and at Acorda’s cost and expense. Cardinal Health shall use its best efforts to provide Acorda with any documents or information reasonably requested by Acorda for purposes of responding to any Agency Communications within 24 hours of Acorda’s request.

9.3. **Acorda Communications**. In addition to Detailing, Cardinal Health shall assist Acorda with respect to Acorda’s communications (as reasonably requested by Acorda and at Acorda’s cost and expense) within the Territory and shall regularly advise Acorda of market, economic, regulatory and other developments of which Cardinal Health (including the Representatives and Managers) may become aware which may affect the sale of the Product(s) in the Territory.

9.4. **Appointment of Coordinators**. The parties shall each appoint an authorized coordinator of the Program mutually-acceptable to each other (“Coordinators”) between whom all communications required or desired to be given will be sent and between whom Detailing activities will be coordinated. Each party may replace its Coordinator at any time, upon notice to the other party. Initially during the Term, the Coordinators for Acorda and Cardinal Health shall be Michael Hilton and Richard Denfrund, respectively.

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

9.5. Review of Results. The parties shall meet periodically, but at least once per calendar quarter, to review and discuss the actual results compared to the marketing plans for Detailing of the Product(s). Acorda shall share with Cardinal Health the Gross Sales (as defined in Schedule 3.1) data, as well as any other reports, audits and other data it deems appropriate (in its sole discretion) relative to the Program.

## **ARTICLE X** **INSURANCE**

10.1. Cardinal Health Insurance Coverage. Cardinal Health shall maintain insurance coverage as follows, or shall maintain self-insurance sufficient to meet its indemnity obligations hereunder:

- (a) Workers' Compensation insurance with statutory limits of liability and Employer's Liability insurance in accordance with the statutory requirements of the states in which the services are to be rendered;
- (b) Commercial General Liability insurance, including completed operations and products liability, with a combined single limit of [\*\*\*]; and
- (c) Automobile liability insurance with a combined single limit of [\*\*\*].

All of the foregoing insurance policies shall cover claims on an "occurrence" basis and not on a "claims made" basis in order to assure that incidents occurring during the Term of this Agreement are covered under the policies even though the resulting claim is not brought until after this Agreement has expired or has been terminated.

10.2. Acorda Insurance Coverage. Acorda shall maintain Commercial General Liability insurance (primary and seconds coverage combined), including completed operations, with a combined single limit of at least [\*\*\*] or shall maintain self-insurance sufficient to meet its indemnity obligations hereunder.

10.3. Certificates of Insurance. Each Party shall, within fifteen (15) days after request by the other party, furnish a Certificate of Insurance as evidence of the foregoing insurance. Each party will use reasonable commercial efforts to obtain an agreement from each insurer that such insurer will endeavor to provide the other party thirty (30) days' prior written notice of any cancellation or material change of the insurance coverage required by this Article.

## **ARTICLE XI** **ADVERSE EVENT REPORTING AND REGULATORY MATTERS**

11.1. Immediate Notification. Cardinal Health shall notify Medcom Solutions, at telephone number [\*\*\*] facsimile number [\*\*\*] e-mail [\*\*\*] ("Medcom") or such other entity as designated by Acorda, in writing, as soon as reasonably practicable but in no event more than 24 hours after it or any Representative or Manager obtains or learns of any information relating to an Adverse Event concerning any Product(s), including but not limited to any package complaint or other complaints regarding any side effect, injury, toxicity or sensitivity reaction or any

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

unexpected incidence of severity thereof associated with the clinical uses, studies, investigations, tests and marketing of the Product(s), whether or not determined to be attributable to the Product(s). Cardinal Health shall also notify Medcom (or other designee) within 24 hours of any other adverse experience, i.e., any unfavorable and unintended change in the structure (signs), function (symptoms) or chemistry (laboratory data) of the body temporally associated with the use of the Product(s), whether or not considered related thereto. As part of such notification, Cardinal Health shall forward to Medcom (or other designee) any related information, including, but not limited to, initial and follow up reports, that becomes known to Cardinal Health or any Representative or Manager from any source in any form as soon as it becomes available, but in any event within 24 hours of becoming aware of such information. Cardinal Health shall cooperate with all reasonable requests by Acorda to ensure that an AE is sufficiently investigated, including, but not limited to seeking additional information relating to an AE and contacting the initial reporter of an AE.

11.2. Threatened Agency Action. Cardinal Health shall immediately notify Acorda in writing of any information that Cardinal Health (including the Representatives and Managers) may obtain or learn regarding any threatened or pending action by an Agency which may affect either the Product(s) or the Program (including but not limited to Product recalls). Cardinal Health shall, at the request of Acorda and at the cost and expense of Acorda, cooperate with Acorda in formulating a procedure for taking appropriate action in response to such information; provided, however, that the appropriate responsive action to be taken shall be decided exclusively by Acorda to the extent the information regarding the threatened or pending action relates in whole or in part to the Product(s) (as determined by Acorda in its sole judgment). Unless compelled by law, Cardinal Health shall not respond to an Agency without the prior written consent of Acorda.

11.3. Training Requirements. The Cardinal Health Training Requirements shall include appropriate instructions for Representatives as to handling of information received or obtained subject to Sections 11.1 and 11.2.

## ARTICLE XII RETURN/RECALL

12.1. Returned Products. Acorda shall be responsible for handling all returned Product(s), including any applicable shipment costs and compensation or credit for the returned Product(s). Any Product(s) inadvertently returned to Cardinal Health shall be shipped by it to Acorda or in accordance with its directions, in compliance with Acorda's returned goods policy, and Cardinal Health shall advise Acorda of the name and address of the person or entity making the return and the reason given therefor, if any. Acorda shall reimburse Cardinal Health's reasonable and documented shipping and other costs in connection with the handling of such returned Product(s) within 45 days of delivery to Acorda of Cardinal Health's statement for such costs. Upon Acorda's request, Cardinal Health shall provide Acorda with documentation relating to any costs incurred by Cardinal Health in connection with any returned Product(s).

12.2. Recalled Products. At Acorda's request, Cardinal Health shall assist Acorda in obtaining, receiving and collecting any Product(s) (including Product samples) that have been

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

recalled, and any costs reasonably incurred by Cardinal Health with respect to participating in any such recall shall be reimbursed by Acorda within 45 days of delivery to Acorda of Cardinal Health's statement for such costs, except in the event Cardinal Health's actions under this Agreement are responsible for the recall, in which case Cardinal Health shall indemnify, defend and hold harmless Acorda and its officers, directors, employees, agents and Affiliates for all costs and liabilities associated with such a recall. Only Acorda or an Agency with proper jurisdiction shall have the authority to make any determination to recall a Product.

### **ARTICLE XIII** **CONFIDENTIAL INFORMATION**

13.1. **Confidential Information**. Each party acknowledges and agrees that it will have access to, or become acquainted with, Confidential Information of the other party in the course of the performance of services under this Agreement. For the purposes of this Agreement, "Confidential Information" shall mean any information and materials of either party or any of their respective Affiliates, which gives such party an advantage over its competitors who do not possess such information and constitutes valuable trade secrets, or information or materials which a party otherwise considers to be confidential and/or proprietary that was revealed to the other party as a result of entering into or performing its obligations under this Agreement, including but not limited to, information which relates to Product(s), the Program, Target Customers, designs, methods, research and development, discoveries, improvements, documents, trade secrets, proprietary rights, business affairs or employee information. Confidential Information shall not include any information that, as demonstrated by satisfactory evidence:

- (a) Was known to the receiving party prior to execution of this Agreement without an obligation to keep it confidential;
- (b) Was lawfully obtained by the receiving party from a third party without any obligation of confidentiality;
- (c) Is, at the time of disclosure, in the public domain;
- (d) Becomes part of the public domain after disclosure by publication or otherwise, except by breach of this Agreement;
- (e) Is developed by or for the receiving party independently and apart from the disclosing party's Confidential Information; or
- (f) Is otherwise knowledge possessed by the receiving party or its employees without access or reference to the disclosing party's Confidential Information as the result of their industry experience or education.

13.2. **Handling of Confidential Information**. Each party agrees that it will use its best efforts to protect the secrecy of, and avoid disclosure or use of, any Confidential Information of the other party. Such measures shall include, but not be limited to, the highest degree of care that such party utilizes to protect its own Confidential Information of a similar nature. Each party agrees to notify the other in writing of any misuse or misappropriation of the other party's

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

**Confidential Information.** Except as otherwise required by law, each party shall keep all Confidential Information in confidence and shall not, at any time during the Term hereof or for a period of ten (10) years from the termination of this Agreement, without the disclosing party's prior written consent, disclose or otherwise make available, directly or indirectly, any Confidential Information to anyone other than the receiving party's employees who need to know the same in the performance of their services and obligations hereunder; provided, however, that Cardinal Health may also disclose Acorda's Confidential Information to its Affiliates which have a need to know the same in the performance of the services hereunder. Each party shall use the Confidential Information only in connection with the performance of their services and obligations hereunder and for no other purpose. Each party shall inform its employees, and in the case of Cardinal Health, its Affiliates, of the trade secret, proprietary and confidential nature of the Confidential Information, and each party shall be directly responsible for any breaches of the provisions of this Article by any such employees and Affiliates.

13.3. **No Rights Granted.** The disclosure of Confidential Information shall not be construed as or constitute an express or implied grant of any intellectual property rights to the receiving party in such Confidential Information, including but not limited to any right, title, interest, or license in or to such Confidential Information. All Confidential Information shall at all times remain the property of the disclosing party.

13.4. **No Representations.** Except as otherwise expressly stated in this Agreement, a party disclosing any of its Confidential Information shall not be deemed to make any representation or warranty, express or implied, as to the accuracy or completeness of such Confidential Information, and such disclosing party will not have any liability for any errors or omissions therein.

## **ARTICLE XIV** **TERM AND TERMINATION**

14.1. **Term.** This Agreement shall take effect on the Effective Date and shall continue in effect until July 31, 2007 (the "Term"), unless terminated earlier as set forth herein. This Agreement shall be renewable only upon the written agreement by both parties.

14.2. **Termination Without Cause.** Subject to Sections 14.7 and 17.14, and with the exception of Periods 1 and 2 (as defined in Schedule 3.1), either party shall have the right to terminate this Agreement with no further obligation at any time after Period 2 for any or no reason on sixty (60) days prior written notice to the other party. Neither party shall have the right to terminate under this Section until the completion of Period 2.

14.3. **Bankruptcy: Insolvency.** Either party may terminate this Agreement upon notice to the other upon the occurrence of: (a) the entry of a decree or order for relief by a court of proper jurisdiction in an involuntary case of the other party under the Federal Bankruptcy Code, as now constituted or hereafter amended, or any other applicable federal or state insolvency or other similar laws, and the continuance of any such decree or order in effect for a period of sixty (60) consecutive days; or (b) the filing by the other party of a petition for relief under the Federal

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

Bankruptcy Code, as now constituted or hereafter amended, or any other applicable federal or state insolvency or similar laws.

14.4. Termination For Breach. Subject to Section 14.7 and other continuing obligations under Section 17.14, either party may terminate this Agreement in the event of a material breach of the other party's obligations under this Agreement, provided that such breach has not been cured within thirty (30) days after written notice thereof from the non-breaching party.

14.5. Termination Due To Regulatory And Other Problems. If the Product is not being marketed due to regulatory problems, court or administrative proceedings, product liability claims, recalls, raw materials shortages, or other reasons, then, subject to Sections 14.7 and 17.14, either party may terminate this Agreement upon thirty (30) days' prior written notice to the other.

14.6. Termination: Phase Out or Transition. In the event that this Agreement is terminated pursuant to Sections 14.2 through 14.5, and at Acorda's request, the parties shall discuss in good faith an appropriate phase-out of Cardinal Health's Detailing activities, or, if so requested by Acorda, Cardinal Health shall provide its full cooperation and assistance in transitioning the Program and services as reasonably requested by Acorda, including by agreeing to promptly deliver its work in progress, data, files, reports, materials relating to the Program and all Product Promotional Materials and samples in its possession and control to such successor agency or to Acorda (at Acorda's election).

14.7. Termination: Continuing Rights. The termination or expiration of this Agreement shall not affect the validity and enforceability of any right or obligation of either party hereunder that accrued prior to, and was outstanding on, the termination or expiration date. Without limiting the foregoing, the termination or expiration of this Agreement shall not affect any rights or obligations of any party under this Agreement which are stated to survive such termination pursuant to Section 17.14 hereof.

14.8. Final Settlement upon Early Termination. Promptly after the early termination of this Agreement, the parties shall cooperate in order to jointly calculate the amount of any final Service Fees that may have been earned by, or due from, Cardinal Health as of the termination date. The amount of such Service Fees, if any, that have been earned, or that must be refunded, by Cardinal Health shall be calculated as follows:

(a) Termination by Cardinal Health For Cause or Regulatory Problems.

(i) Period 1 & 2. If this Agreement is terminated by Cardinal Health during Period 1 or 2 (as defined in Schedule 3.1) pursuant to (a) Section 14.4, or (b) Section 14.5 due to a regulatory or other problem caused by a person or entity other than Cardinal Health, then Acorda shall pay Cardinal Health the Prorated Payment (defined in Section 14.8(c)(v))

(ii) Period 3. If this Agreement is terminated by Cardinal Health during Period 3 (as defined in Schedule 3.1) pursuant to (a) Section 14.4, or (b) Section 14.5

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

due to a regulatory or other problem caused by a person or entity other than Cardinal Health and the Gross Sales up to the date of termination are at least [\*\*\*] of the Annual Baseline Forecast, then Acorda shall pay Cardinal Health the Prorated Payment (defined in Section 14.8(c)).

(iii) *Period 4*. If this Agreement is terminated by Cardinal Health during Period 4 (as defined in Schedule 3.1) pursuant to (a) Section 14.4, or (b) Section 14.5 due to a regulatory or other problem caused by a person or entity other than Cardinal Health and the Gross Sales up to the date of termination are at least [\*\*\*] of the Annual Baseline Forecast, then Acorda shall pay Cardinal Health in accordance with the payment schedule set forth in Schedule 3.1 notwithstanding that this Agreement was terminated before the entire year had been completed. For example, if Gross Sales as of the date of termination are [\*\*\*] of the Annual Baseline Forecast, then Acorda shall pay Cardinal Health the amount due if Gross Sales for the entire year were [\*\*\*] of the Annual Baseline Forecast.

(iv) *No Effect on Other Remedies*. Payments under this subsection, if any, shall be payment for services rendered and shall not be deemed to be a payment in settlement of any claims that either party may have against the other party under this Agreement. Each party shall retain all rights and remedies available to it at law or in equity.

(b) Termination by Acorda For Cause or Regulatory Problems.

(i) *Period 1 & 2*. If this Agreement is terminated by Acorda during Period 1 or 2 (as defined in Schedule 3.1) pursuant to (a) Section 14.4, or (b) Section 14.5 due to a regulatory or other problem caused or contributed to by Cardinal Health, then Acorda shall not be obligated to make any payments to Cardinal Health for Services rendered under this Agreement or pay Cardinal Health the Prorated Payment (defined in Section 14.8(c)).

(ii) *Period 3*. If this Agreement is terminated by Acorda during Period 3 (as defined in Schedule 3.1) pursuant to (a) Section 14.4, or (b) Section 14.5 due to a regulatory or other problem caused or contributed to by Cardinal Health and the Gross Sales up to the date of termination are at least [\*\*\*] of the Annual Baseline Forecast, then Acorda shall pay Cardinal Health the Prorated Payment (defined in Section 14.8(c)).

(iii) *Period 4*. If this Agreement is terminated by Acorda during Period 4 (as defined in Schedule 3.1) pursuant to (a) Section 14.4, or (b) Section 14.5 due to a regulatory or other problem caused by Cardinal Health and the Gross Sales up to the date of termination are at least [\*\*\*] of the Annual Baseline Forecast, then Acorda shall pay Cardinal Health in accordance with the payment schedule set forth in Schedule 3.1 notwithstanding that this Agreement was terminated before the entire year had been completed. For example, if Gross Sales as of the date of termination are [\*\*\*] of the Annual Baseline Forecast, then Acorda shall pay Cardinal Health the amount due if Gross Sales for the entire year were [\*\*\*] of the Annual Baseline Forecast.

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

(iv) No Effect on Other Remedies. Payments under this Subsection shall be payment for services rendered and shall not be deemed to be a payment in settlement of any claims that either party may have against the other party under this Agreement. Each party shall retain all rights and remedies available to it at law or in equity.

(c) Calculation of Prorated Payment. For purposes of this Section 14.8, the amount of any “Prorated Payment” shall be calculated as set forth below. The parties agree that the provisions of this Subsection (c) only provide the method of calculating payments that are due under Subsections of Section 14.8 specifically requiring payment of the Prorated Payment and shall not create or serve as the basis for an entitlement to any payment not otherwise provided for in Section 14.8.

(i) determine the exact number of days elapsed from the beginning of the Contract Year through the termination date, and divide this number by 365 (the “Pro-ration Fraction”);

(ii) multiply the Pro-ration Fraction by the Annual Baseline Forecast (as defined in Schedule 3.1) in effect for that Contract Year (the “Prorated Baseline Forecast”);

(iii) calculate the aggregate Gross Sales (as defined in Schedule 3.1) from the beginning of the Contract Year through the termination date, based upon data from NDC Health (as defined hereafter) (“Gross Sales to Date”); and

(iv) calculate the percentage of the Prorated Baseline Forecast that such Gross Sales to Date represent (the “Prorated Percentage Result”).

(v) If the Prorated Percentage Result is more than [\*\*\*] but less than [\*\*\*] then the amount of the Prorated Payment shall be paid by Acorda in an amount equal to (1) [\*\*\*](2) multiplied by the Pro-Ration Fraction, (3) minus the sum total of all interim Advances already paid to Cardinal Health in respect of prior Periods (as defined in Schedule 3.1) of such Contract Year. After payment of such amount, no further Service Fees or Interim Advances shall be paid under this Agreement.

(vi) If the Prorated Percentage Result is equal to or exceeds [\*\*\*] then a payment shall be paid by Acorda in an amount equal to (1) the Service Fee that would have been payable if aggregate Gross Sales for the entire Contract Year were equal to the same Prorated Percentage Result (as set forth in Schedule 3.1), (2) multiplied by the Pro-ration Fraction, (3) minus the sum total of all Interim Advances already paid to Cardinal Health in respect of prior Periods (as defined in Schedule 3.1) of such Contract Year. After payment of such amount, no further Service Fees or Interim Advances shall be paid under this Agreement.

(d) Termination by Either Party Without Cause. Neither party shall have the right to terminate pursuant to Section 14.2 at any time during Periods 1 and 2. Thereafter, if this

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

Agreement is terminated by either party in accordance with Section 14.2, then the final Service Fee amount that may be due hereunder shall be calculated as follows.

(i) If this Agreement is terminated by Acorda pursuant to Section 14.2, and the Gross Sales as of the date of termination are at least [\*\*\*] of the Annual Baseline Forecast then Cardinal Health shall receive a final Service Fee payment, if any is due, in an amount equal to:

(A) if Acorda terminates during Period 3, an amount equal to [\*\*\*] of the Prorated Payment (if any);  
and

(B) if Acorda terminates during Period 4, an amount equal to the Prorated Payment (if any).

(ii) If this Agreement is terminated by Cardinal Health pursuant to Section 14.2 and the Gross Sales as of the date of termination are at least [\*\*\*] of the Annual Baseline Forecast, then it shall receive a final Service Fee payment, if any is due, in an amount equal to:

(A) if Cardinal Health terminates during Period 3, an amount equal to [\*\*\*] of the Prorated Payment (if any); and

(B) if Cardinal Health terminates during Period 4, an amount equal to the Prorated Payment (if any).

(iii) After payment of any final Service Fee determined to be due in accordance with the foregoing, no further Services Fees or Interim Advances shall be paid under this Agreement.

(e) All payments made to Cardinal Health under this section shall be subject to a “true-up” as provided in Section 3.D. of Schedule 3.1.

14.9. Termination: Return of Materials. Within sixty (60) days following the termination or expiration of this Agreement, Cardinal Health shall return to Acorda all Confidential Information (including but not limited to customer lists and Target Customer information), Product Promotional Materials, Product samples, marketing plans, forms, territory lists, reports and any and all other tangible items provided to Cardinal Health or the Representatives by Acorda, or prepared by or for Cardinal Health or the Representatives based upon, incorporating or summarizing any of the foregoing information or materials.

## **ARTICLE XV** **RECORDKEEPING; AUDIT RIGHTS**

15.1. Cardinal Health Record Keeping: Inspection and Audit by Acorda. Cardinal Health shall keep accurate records in sufficient detail (and in compliance with all Laws) as to its services and performance under this Agreement (including but not limited to specifics regarding actual Details made, Product samples distributed, occurrences involving noncompliance with

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

SOPs, and AE incidents reported to it and relayed to Acorda) as well as relating to the costs and expenses for which Acorda must reimburse Cardinal Health under this Agreement as specified under “Direct Pass-Through Expenses” in Schedule 3.1. Upon Acorda’s reasonable request made at any time or from time to time during, or within two (2) years after, the Term of this Agreement, or at any time hereafter that there shall be an investigation, subpoena or proceeding undertaken, issued or pending by an Agency involving Acorda, the Product(s), the Program or this Agreement, then at Acorda’s expense, Cardinal Health shall permit Acorda’s designated employees or agents to have access during ordinary business hours to such records in order to verify the accuracy thereof. Acorda and its designated employees or agents shall maintain in confidence all such records of Cardinal Health. In addition, upon request by Acorda, Cardinal Health shall also grant Acorda, without charge, reasonable access to each facility at which Cardinal Health stores or handles any Product samples, so that Acorda or its designee can conduct a physical inventory and reconciliation of the samples. The rights set forth in this Article 15 shall not limit Cardinal Health’s obligation to provide the oral and written reports and notices, and to support all expense reimbursement requests with documentation, as otherwise provided in this Agreement.

15.2. **Overstatements**. If any such examination or audit pursuant to Section 15.1 reveals that the amount of Direct Pass-Through Expenses have been overstated, then any excess payment made to Cardinal Health based upon such overstatement shall be offset against any sums then payable or thereafter payable to Cardinal Health, or promptly refunded to Acorda, at Acorda’s election. Acorda shall pay the fees and expenses of the employee or agent engaged to perform the audit, unless such audit reveals a discrepancy of [\*\*\*] or more for the period examined which is to the disadvantage of Acorda, in which case Cardinal Health shall pay all reasonable costs and expenses incurred by Acorda in the course of making such determination, including the fees and expenses of the employee or agent.

## **ARTICLE XVI** **INDEMNIFICATION**

16.1. **Definitions**. As used in this Article 16 and this Agreement, “Damages” shall mean all liabilities, damages, assessments, levies, losses, fines, penalties, costs, and expenses, including, without limitation, reasonable attorneys’ , accountants’ , investigators’ , and experts’ fees and expenses, sustained or incurred as a result of any third party claims, suits, liabilities, or actions of any nature.

16.2. **Indemnification by Cardinal Health**. Cardinal Health shall indemnify, defend and hold Acorda, its Affiliates, directors, officers, employees and agents harmless from and against any and all Damages (except to the extent such Damages are due to the negligence, omission or intentional wrongful actions of Acorda or the material breach of this Agreement by Acorda) directly or indirectly arising from or related to:

- (a) Cardinal Health’s breach of or failure to comply with any of its obligations under this Agreement;

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

(b) any inaccuracy in or breach or failure of any representation, warranty, or covenant made by Cardinal Health in this Agreement;

(c) any negligent or wrongful act or omission on the part of Cardinal Health or its employees or agents (including the Representatives and Managers);

(d) Cardinal Health's violation of or failure to comply with all Laws, SOPs and Acorda Written Instructions relating to the promotion, distribution and sale of the Product(s), sample handling and distribution, the Cardinal Health Training Requirements, the Program and this Agreement;

(e) Detailing of the Product(s);

(f) any federal or state claim or assessment for nonpayment or late payment by Cardinal Health of any tax or contribution based on Cardinal Health's income, employee-related tax liabilities or withholding, or the status of any Representatives or Managers as employees of Cardinal Health; or

(g) any claims or liabilities based on injury to persons or property, regardless of when such claim or liability is asserted or incurred, resulting from or arising out of any Representative's or Manager's actions or inactions while performing the Detailing or supervising activities (including but not limited to accidents, trespass or violation of civil ordinances).

16.3. Indemnification by Acorda. Acorda shall indemnify, defend and hold Cardinal Health and its Affiliates, directors, officers, employees and agents harmless from and against any and all Damages (except to the extent such Damages are due to the negligence, omission or intentional wrongful actions of Cardinal Health or the material breach of this Agreement by Cardinal Health), directly or indirectly arising from or related to:

(a) Acorda's breach of or failure to comply with any of its obligations under this Agreement;

(b) any inaccuracy in or breach or failure of any representation, warranty, or covenant made by Acorda in this Agreement;

(c) any negligent or wrongful act or omission on the part of Acorda or its employees or agents;

(d) Acorda's violation of or failure to comply with all Laws relating to the manufacture, sale, distribution, possession and use of the Product(s), the Program, the Product Promotional Materials, the Acorda Training Program, and this Agreement;

(e) use by Cardinal Health of the Acorda Training Program or the Product Promotional Materials in accordance with the SOPS, Written Instructions, and the terms of this Agreement;

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

- (f) any claims or liabilities for injury to or death of persons or harm to property, regardless of when such claim or liability is asserted or incurred, resulting from or arising out of the manufacture, use, sale, distribution or possession of the Product(s), or a manufacturing design or defect of the Product(s), or any failure to warn or inadequacy of warning regarding the Product(s);
- (g) Acorda's failure to pay when due or to reimburse Cardinal Health for any Taxes (as defined in Section 5.3);
- (h) any negligent or wrongful acts or omissions on the part of Acorda with respect to Cardinal Health's employees or Representatives; or
- (i) the use by Cardinal Health, in the performance of its duties hereunder and as specified or directed by Acorda, of any trademark, trade name, copyright, patent or other rights which use actually or allegedly infringes on the rights of any third party.

**16.4. Indemnification Procedures.** A party (the "Indemnitee") which intends to claim indemnification under this Article 16 shall promptly notify the other party (the "Indemnitor") in writing of any pending or threatened action, claim or liability in respect of which the Indemnitee or any of its employees or agents are entitled to indemnification. The Indemnitee shall permit, and shall cause its employees and agents to permit, the Indemnitor at its discretion, to settle any such action, claim or liability and agrees to the complete control of such defense or settlement by the Indemnitor; provided, however, that such settlement or defense does not require the Indemnitee to admit to any liability, adversely affect the Indemnitee's rights hereunder or impose any obligations on the Indemnitee in addition to those set forth in this Agreement. The Indemnitee and its employees and agents shall cooperate fully with the Indemnitor and its legal representatives in the investigation and defense of any such action, claim or liability which is the subject of indemnification. The Indemnitee shall have the right, but not the obligation, to be represented by counsel of its own selection and at its own expense in connection with any indemnified claim.

**16.5. Limitation on Liability.** Except in the event of (i) Cardinal Health's gross negligence or willful misconduct, or (ii) any liability arising from negligent operation of an automobile by a Representative or Manager or operation of an automobile in violation of applicable laws, in which case there shall be no limitation of liability, the total liability of Cardinal Health under this Agreement shall not exceed an amount equal to the maximum total amount of Service Fees that would be paid to Cardinal Health under this Agreement if Gross Sales exceeded [\*\*\*] of the Annual Baseline Forecasts over the Term of this Agreement.

**16.6. No Consequential Damages.** Except with respect to any criminal or civil fines or penalties that may be imposed on a party hereunder, notwithstanding any provision of this Agreement to the contrary, neither party shall be liable to the other on any theory of liability for any special, indirect, incidental, exemplary, punitive or consequential damages, including but not limited to lost profits, in connection with or as a result of the transactions contemplated by this Agreement, it being the intention of the parties that they be liable only for actual and direct damages proven in a court of competent jurisdiction.

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

16.7. Insurance Offset. For the avoidance of doubt, no Indemnitee under this Agreement shall be required to make a claim under any of its insurance policies with respect to Damages which the Indemnitor is required to indemnify the Indemnitee under this Agreement and may at any time withdraw any claims which it has filed with an insurer. Notwithstanding the foregoing, for purposes of calculating the amount of indemnifiable Damages hereunder, the total amount of Damages incurred by the Indemnitee shall be adjusted to account for any (a) insurance payments or proceeds actually received by the Indemnitee in connection with the occurrence of the event which resulted in the incurrence of the Damages, as well as any related increase in insurance premiums thereafter payable by the Indemnitee, and (b) any tax gain or loss that will result from the occurrence of such event or from its receipt payment of the indemnification payment hereunder.

## **ARTICLE XVII** **MISCELLANEOUS**

17.1. No Waiver: Cumulative Remedies. No failure or delay on the part of either party in exercising any right, power or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy hereunder. No waiver of any provision hereof shall be effective unless in writing and signed by the party giving such waiver. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

17.2. Captions. Article and Section headings used in this Agreement are for convenience only and shall not affect the construction of this Agreement.

17.3. Governing Law. This Agreement shall be construed and the respective rights of the parties hereto determined according to the substantive laws of the State of New York, exclusive of conflict of laws principles.

17.4. Severability. If any provision of this Agreement or any other document delivered under this Agreement is prohibited or unenforceable in any jurisdiction, it shall be ineffective in such jurisdiction only to the extent of such prohibition or unenforceability, and such prohibition or unenforceability shall not invalidate the balance of such provision to the extent it is not prohibited or enforceable nor the remaining provisions hereof, nor render unenforceable such provision in any other jurisdiction. In the event any provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the parties hereto shall use their best efforts to substitute a valid, legal and enforceable provision which, insofar as practical, implements the purposes hereof.

17.5. Entire Agreement: Modification. This Agreement contains the entire and exclusive agreement between the parties in respect of the subject matter hereof and supersedes and cancels all previous agreements, negotiations, commitments and writings between the parties hereto in respect of the subject matter hereof. Except as provided herein, this Agreement may not be changed or modified in any manner or released, discharged, abandoned or otherwise

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

terminated unless in writing and signed by the duly authorized officers or representatives of the parties.

17.6. Notices. Any notice or request required or desired to be given in connection with this Agreement shall be deemed to have been sufficiently given if sent by pre-paid registered or certified mail or facsimile transmission to the intended recipient at the address set forth below or such other address as may have been furnished in writing by the intended recipient to the sender. The date of mailing or facsimile transmission shall be deemed to be the effective date on which notice was given, provided that all facsimile transmissions shall contain a provision requiring the intended recipient to confirm receipt and no facsimile transmission shall be effective unless confirmation of its receipt is received within twenty-four hours of its transmission.

All notices shall be addressed to:

[\*\*\*]

[\*\*\*]

[\*\*\*]

[\*\*\*]

17.7. Execution in Counterparts. Agreement may be executed in counterparts, each of which, when executed and delivered, shall be deemed to be an original and all of which together shall constitute one and the same document.

17.8. Assignment. This Agreement may not be assigned or transferred by a party without the prior written consent of the other party hereto, which consent shall not be unreasonably delayed or withheld. Any such assignment shall not materially or adversely affect the rights or obligations of either party to this Agreement.

17.9. Public Announcements. Neither party will make any press release or other public disclosure regarding this Agreement or the transactions contemplated hereby without the other party's express prior written consent, except as required under applicable law or by any governmental agency, in which case the party required to make the press release or public disclosure shall use commercially reasonable efforts to obtain the approval of the other party as to the form, nature and extent of the press release or public disclosure prior to issuing the press release or making the public disclosure.

17.10. Maintenance of Records. Cardinal Health and Acorda each agree that throughout the Term of this Agreement and for a period of six years after the termination or expiration of this Agreement, each will maintain records and otherwise establish procedures to assure compliance with all regulatory, professional, and other applicable legal requirements which relate to the Detailing and marketing of the Product(s) and if applicable, with the other services and activities to be performed hereunder.

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

17.11. Force Majeure. Failure of either party hereto to fulfill or perform its obligations under this Agreement shall not subject such party to any liability if such failure is caused or occasioned by, without limitation, acts of God, acts of the public enemy, fire, explosion, flood, drought, war, riot, sabotage, embargo, strikes or other labor disputes (which strikes or disputes need not be settled), compliance with any order, regulation, or request of government, or by any other event or circumstance of like or different character to the foregoing beyond the reasonable control and without the fault or negligence of such party (a “Force Majeure Event”) provided such party uses reasonable efforts to remove such Force Majeure Event and gives the other party prompt notice of the existence of such Force Majeure Event. No Force Majeure Event shall serve to delay or excuse any payment by one party to the other then due and owing.

17.12. Compliance. Cardinal Health and Acorda agree to undertake all their respective obligations under this Agreement in material conformance with all Laws. By entering into this Agreement, it is not the intent of the parties to enter into any financial relationship or arrangement prohibited under state or federal fraud or abuse regulations, including but not limited to Sec. 1128B(b) of the Social Security Act, and any regulations promulgated thereunder, nor do the parties hereto have any belief that the relationship and compensation arrangement provided in this Agreement is prohibited. Neither party shall assert against the other that the compensation arrangement provided in this Agreement is grounds for voiding the Agreement or rendering the Agreement unenforceable.

17.13. Survival. The terms and provisions of Sections 2.5, 3.1, 3.3, 5.1, 5.2, 5.3, 5.4, 7.5, Articles VIII, IX, XI, XII and XIII, Sections 14.7 through 14.10, Article XV, XVI, Section 17.3, 17.5, 17.9, 17.10, 17.12 and 17.13 hereof shall survive the termination of this Agreement, whether such termination occur by expiration of the Term or by early termination hereof.

\* \* \* \* \*

*Signature Page Follows*

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers.

CARDINAL HEALTH PTS, LLC

ACORDA THERAPEUTICS, INC.

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

**Schedule 1.1(n)**

**List of Products**

**Zanaflex® Capsules**

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

**Schedule 2.7**

**Form of Management Report**

[\*\*\*]

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

### **Schedule 3.1**

#### **Detail and Payment Schedule**

[\*\*\*]

[\*\*\*]

[\*\*\*]

**Section 4.** Summary of Services to be Provided by Cardinal Health. Set forth below is a summary of the services to be provided by Cardinal Health hereunder (collectively, the “Services”):

- Detailing of the Product(s)
- Recruitment for any turnover during Program for both sales Representatives and Managers
- Payment of salary, bonus, payroll taxes, benefits, and fleet cars for sales Representatives and Managers.
- Territory travel expenses for sales Representatives and Managers
- Project management team that includes the following shared resources: national sales director, account executive, operations manager, human resources coordinator, Acorda services manager, information services manager, financial services manager, sales trainer and a help desk
- Assist in Acorda Program Training and joint responsibility for POA meetings (including meeting planning & logistics, Program agenda and strategy)
- Sole responsibility for Cardinal Health Training Requirements (including but not limited to selling skills training)
- On-going Representative training (does not include Acorda Training Program T&E)
- Call reporting
- Data management & reporting services
- Monthly reporting package and quarterly reviews
- Project administration (supplies, postage and printing) & operational support
- Sample storage, handling, management and distribution responsibilities
- Collective sample requisition reports on behalf of all Representatives

**Section 5.** Direct Pass-Through Expenses of Acorda. The following are the sole expenses for which Acorda shall reimburse Cardinal Health under this Agreement. Such expenses shall be reimbursed whether or not Acorda owes Cardinal Health any Service Fees in accordance with the Agreement and this Schedule 3.1.

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

- Actual travel and meeting expenses for all required participation in any Acorda Training Program and subsequent POA meetings, including the Program launch meeting.
- Cost of Additional Promotional Activities. To the extent Acorda hereafter approves additional Representative promotional activities for the Program, the parties will agree first in writing upon and manage a budget based upon promotional programs, per Section 2.3(i) of the Agreement.
- Actual costs of sample storage, handling and distribution responsibilities

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

## Schedule 1

### Interim Advance Payment Table

[to be attached]

34

---

## Exhibit 10.34

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

### LICENSE AGREEMENT

**THIS LICENSE AGREEMENT** (the “**Agreement**”) is made and entered into as of this 19th day of December, 2003 (the “**Effective Date**”) among **ACORDA THERAPEUTICS, INC.**, a corporation organized and existing under the laws of the state of Delaware having a principal place of business at 15 Skyline Drive, Hawthorne, New York 10532, USA (“**Acorda**”), **CAMBRIDGE UNIVERSITY TECHNICAL SERVICES LIMITED**, an entity organized and existing under the laws of England having a registered address at The Old Schools, Trinity Lane, Cambridge CB2 1TS, UK. (“**CUTS**”), and **KING’S COLLEGE LONDON**, an Institution incorporated by Royal Charter, of Strand, London, WC2R 2LS, UK (“**KCL**”; CUTS and KCL may be collectively referred to as the “**Institutions**”). Each of Acorda, CUTS and KCL may be referred to herein individually as a “**Party**” and collectively as the “**Parties**.<sup>\*</sup>”

### RECITALS

**WHEREAS**, CUTS is a wholly owned trading subsidiary of The Chancellor, Masters and Scholars of the University of Cambridge (“**Cambridge**”) and administers the granting of licenses on behalf of Cambridge;

**WHEREAS**, Professor James Fawcett of Cambridge, together with Professor Stephen McMahon and Dr. Elizabeth Bradbury of KCL, have developed technology described and claimed in the Patent Application (as defined in Section 1.17), and both Professor Fawcett and Cambridge have assigned to CUTS all of their intellectual property rights in the Patent Application, and all intellectual property rights in Professor McMahon’s and Dr. Bradbury’s inventions claimed in the Patent Application are owned by KCL;

**WHEREAS**, Institutions jointly own all right, title and interest in the international patent application entitled “Materials and Methods for the Treatment of CNS Damage”;

**WHEREAS**, Acorda desires to obtain and Institutions wish to grant to Acorda, an exclusive (except as otherwise provided in this Agreement), worldwide development and commercialization license under such international patent application and any patents owned or controlled by the Institutions that arise or derive from such international patent application, including all intellectual property rights therein, for the development and commercialization of pharmaceutical products for all purposes; and

**WHEREAS**, Acorda also wishes to collaborate with Cambridge and KCL to undertake a research project on the terms set out in a sponsored research agreement of even date.

**NOW, THEREFORE**, in consideration of the foregoing premises and the mutual covenants set forth below, and for other good and valuable consideration, receipt of which is hereby acknowledged, the Parties hereby agree as follows:

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

## ARTICLE 1

### DEFINITIONS

The following terms as used herein shall have the following meanings:

**1.1     “Active Ingredient”** means any compound or molecule, whether chemical or biological, that is intended to furnish pharmacological activity or other direct effect in the diagnosis, cure, mitigation, treatment, or prevention of disease, or to affect any structure or any function of the body of man or of animals. For the avoidance of doubt, this term includes those compounds or molecules that may undergo chemical change in the manufacture of a drug product and be present in such drug product in a modified form intended to furnish the specified activity or effect.

**1.2     “Affiliate”** means any corporation or non-corporate business entity which controls, is controlled by, or is under common control with Acorda. A corporation or non-corporate business entity shall be regarded as in control of another corporation if it owns, or directly or indirectly controls, at least fifty percent (50%) of the voting stock of the other corporation, or alternatively in either (a) the absence of the ownership of at least fifty percent (50%) of the voting stock of a corporation or (b) the case of a non-corporate business entity, or non-profit corporation, if it possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such corporation or non-corporate business entity, as applicable.

**1.3     “Clinical Trial”** means any experiment in which a drug containing an Active Ingredient is administered or dispensed to, or used involving, one or more human subjects, except for the use of a marketed drug in the course of normal medical practice.

**1.4     “CNS”** means the central nervous system.

**1.5     “Control” or “Controlled”** means, with respect to a particular item of information or intellectual property right, that the particular Party (a) owns and has the ability to grant to another Party the licenses to such item as provided for herein, without violating the terms of an agreement with any Third Party, and/or (b) has a license to such item and has the ability to grant to another Party the licenses to such item provided for herein, without violating the terms of an agreement with any Third Party.

**1.6     “Dollars”** means United States dollars.

**1.7     “Earned Royalties”** means the royalties payable to Institutions by Acorda on Net Sales of Licensed Products by Acorda and/or its Affiliates as provided in Article 3.

**1.8     “FDA”** means the United States Food and Drug Administration or any successor entity.

**1.9     “IND”** means an investigational new drug application submitted to the FDA, which requests authorization from the FDA to administer an investigational drug or biological product to humans in the United States.

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

**1.10     “**Inventors**”** means Professor James Fawcett, Professor Steve McMahon and Dr. Elizabeth Bradbury.

**1.11     “**Licensed Enzyme Product**”** means any pharmaceutical product containing or directly activating an enzyme, including but not limited to chondroitinase, to treat CNS disorders, diseases or injuries using the method covered by a Valid Claim in the Licensed Patents.

**1.12     “**Licensed Patents**”** means any or all of: (a) the Patent Application; (b) the substitutions, extensions, divisionals, continuations, or continuations-in-part of such Patent Application; (c) the patents issuing on any of the foregoing, including all re-examined or re-issued patents and extensions thereof; and (d) the foreign counterparts of any of the foregoing.

**1.13     “**Licensed Product**”** means either a Licensed Enzyme Product or a Licensed Small Molecule Inhibitor Product.

**1.14     “**Licensed Small Molecule Inhibitor Product**”** means any pharmaceutical product incorporating a small molecule inhibitor which is used to treat CNS disorders, diseases or injuries that is covered by a Valid Claim in the Licensed Patents.

**1.15     “**Licensed Territory**”** means the world.

**1.16     “**Net Sales**”** means the actual amounts invoiced by Acorda and/or its Affiliates for the Sale of Licensed Products to a Third Party purchaser without deduction of any commission paid to a Third Party purchaser but less the following deductions to the extent that such amounts are actually allowed or incurred with respect to such Sales: (a) freight, packaging and insurance costs incurred in transporting the Licensed Product to such customers; (b) quantity, cash and other trade discounts or rebates actually allowed and taken, including without limitation, discounts or rebates granted to managed health care organizations, or as mandated by any governmental agency or branch thereof in the Licensed Territory; (c) customs, duty, sales and other similar taxes; (d) governmental charges incurred in connection with the exportation or importation of such Licensed Products; (e) amounts repaid or credited by reason of rejections, return of goods, recalls or retroactive price reductions and (f) amounts written off in accordance with GAAP as uncollectable debts from the purchasers, not to exceed 4% of Net Sales in any particular royalty period, and provided, however that if such amounts so written off are later collected by Acorda and/or its Affiliates, then such amounts shall be deemed “Net Sales” and Acorda shall pay Institutions the applicable royalty on Net Sales in accordance with Sections 3.2 and 3.3. In any event, Acorda will use reasonable efforts to collect debts from its purchasers of Licensed Products. Sales of Licensed Products or granting of sublicenses by Acorda and its Affiliates to Third Parties shall be on an “arm’s length basis” and on a bona fide basis for the purpose of maximizing revenue.

**1.17     “**Patent Application**”** means the international patent application entitled “Materials and Methods for the Treatment of CNS Damage,” disclosing inventions by the Inventors, filed on the 4<sup>th</sup> March 2003 having serial number PCT/GB2003/000901.

**1.18     “**Payment Period**”** means a semi-annual period ending 30<sup>th</sup> June or 31<sup>st</sup> December of each calendar year.

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

**1.19 “Phase I Clinical Trial”** means a Clinical Trial on sufficient numbers of normal volunteers and subjects that is designed to establish that a pharmaceutical product is safe for its intended use, and to support its continued testing in Phase II Clinical Trials.

**1.20 “Phase II Clinical Trial”** means a Clinical Trial on sufficient numbers of subjects that is designed to establish the safety and biological activity of a pharmaceutical product for its intended use, and to define warnings, precautions, and adverse reactions that are associated with such pharmaceutical product in the dosage range to be prescribed.

**1.21 “Phase III Clinical Trial”** means a Clinical Trial on sufficient numbers of subjects that is designed to establish that a pharmaceutical product is safe and efficacious for its intended use, and to define warnings, precautions, and adverse reactions that are associated with such pharmaceutical product in the dosage range to be prescribed, and to support Regulatory Approval of such pharmaceutical product or label expansion of such pharmaceutical product.

**1.22 “Regulatory Approval”** means the approvals, registrations or authorizations of the Food and Drug Administration (FDA), or the equivalent regulatory agency in a foreign country or jurisdiction necessary for the manufacture, distribution, marketing and sale of a pharmaceutical or diagnostic product in the United States, or such foreign country or jurisdiction, as applicable.

**1.23 “Sale” or “Sold”** means the sale or other commercial disposition of a Licensed Product by Acorda, its Affiliates or sublicensees. In case of doubt, Sales of Licensed Products shall be deemed consummated no later than invoicing of payment to a Third Party for the applicable transaction involving such Licensed Product.

**1.24 “Sublicense Royalties”** means any royalty payments (which for clarity excludes any upfront payments, milestone payments, or any equity investments made in Acorda at fair market value (and provided further that if any equity investment is made at a premium to fair market value, the amount of such premium would be deemed Sublicense Royalties)) received by Acorda and/or its Affiliates from a Third Party sublicensee based on the Sublicense of Acorda’s and/or its Affiliates rights in the Licensed Patents.

**1.25 “Third Party”** means any entity or individual other than Acorda, Cambridge, CUTS or KCL, or an Affiliate.

**1.26 “Valid Claim”** means (a) a claim of any issued, unexpired patent included among the Licensed Patents, which patent claim has not been (i) held unenforceable, unpatentable or invalid by a decision of a court or governmental body of competent jurisdiction, which decision is not further appealable, or (ii) rendered unenforceable through reexamination, reissue, disclaimer or otherwise, or (iii) lost through an interference proceeding, or (iv) abandoned; or (b) a pending claim of an international patent application filed under the Patent Cooperation Treaty (the “PCT”) included within the Licensed Patents, which claim (i) has been pending under examination for less than seven (7) years from date of filing of such claim, and (ii) has been asserted in good faith, and (iii) has not been abandoned or finally rejected without the possibility of appeal or re-filing.

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

## ARTICLE 2

### GRANT OF LICENSE

#### **2.1      Licenses to Acorda.**

**(a)**      Subject to Section 2.2(a), Institutions hereby grant to Acorda and its Affiliates an exclusive (even as to the Institutions), royalty-bearing license, including (subject to the provisions of Section 2.3) the right to grant sublicenses, under the Licensed Patents to use and practice the inventions and information claimed or disclosed therein that relate to enzymatic methods of treating CNS disorder, disease or injury, and to research, develop, make, have made, use, sell, offer for sale, have sold, import, export, lease and otherwise exploit Licensed Enzyme Products for all purposes in the Licensed Territory during the term of this Agreement.

**(b)**      Subject to Section 2.2(b), Institutions hereby grant to Acorda and its Affiliates a non-exclusive, royalty-bearing license, including (subject to the provisions of Sections 2.3 and 2.4) the right to grant sublicenses, under the Licensed Patents to use and practice the inventions and information claimed or disclosed therein that relate to small molecule inhibitors for use in treating CNS disorder, disease or injury, and to research, develop, make, have made, use, sell, offer for sale, have sold, import, export, lease and otherwise exploit Licensed Small Molecule Inhibitor Products for all purposes in the Licensed Territory during the term of this Agreement.

#### **2.2      Retained Rights.**

**(a)**      The license granted in Section 2.1(a) above is subject to a right retained by the Institutions for their selves (and also grants to Cambridge and any wholly owned subsidiary of Cambridge and/or KCL) to use and practice the portions of the Licensed Patents relating to enzymatic methods of treating CNS disorders, diseases or injuries for non-commercial, academic research and educational purposes only. Such retained right shall be transferable to other academic institutions in the event that the Inventors become employed by such institutions, provided, however, that such other institutions' right to use and practice such Licensed Patents shall be subject to the same limitations as those on the Institutions' right to use and practice hereunder.

**(b)**      The license granted in Section 2.1(b) above is subject to a right retained by the Institutions for their selves (and also grants to Cambridge and any wholly owned subsidiary of Cambridge and/or KCL) to use and practice the portions of the Licensed Patents relating to small molecule inhibitors for use in treating CNS disorders, diseases or injuries for all commercial and/or non-commercial purposes. Such retained right shall be transferable to other academic institutions in the event that the Inventors become employed by such institutions, provided, however, that such other institutions' right to use and practice such Licensed Patents shall be subject to the same limitations as those on the Institutions' right to use and practice hereunder.

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

**2.3 Sublicenses.** Acorda and its Affiliates shall have the right to grant sublicenses to Third Parties under any or all of their license rights in the Licensed Patents granted in Section 2.1, provided that:

(a) the pricing of all Licensed Products that may be sold by Acorda or its Affiliate to any such sublicensee shall be determined on an “arm’s length basis” and on a bona fide basis for the purpose of maximizing the revenue;

(b) each such sublicense shall include obligations on the sublicensee that are consistent with the obligations made on Acorda and its Affiliates and agents and sub-contractors under this Agreement (e.g., each such sublicense will include an obligation on the sublicensee to indemnify Acorda and its Affiliates for any losses resulting from claims brought by a third party arising in connection with any personal injury and property damage caused by the manufacture, testing, design, use, Sale or labeling of any Licensed Products by such sublicensee);

(c) each such sublicense shall be memorialized in a written agreement with the sublicensee, a copy of which agreement shall be delivered to each of the Institutions within sixty (60) days of said sublicense becoming effective;

(d) each such sublicense shall terminate automatically on the termination of this Agreement for any reason whatsoever and in such circumstances the Institutions shall grant the sublicensee a direct license to the same extent wherein the financial terms shall be substantially equivalent to those of the sublicense, with all payments due under such direct license being payable directly to the Institutions;

(e) each such sublicense shall provide that Acorda may terminate the sublicense if the sublicensee commences legal proceedings to challenge the validity of any of the Licensed Patents; and

(f) Acorda and its Affiliates shall use best endeavors to enforce all payment obligations contained in each such sublicense.

**2.4** Acorda and its Affiliates (or its sublicensee, as applicable) may grant only one (1) sublicense under the Licensed Patents relating to small molecule inhibitors for use in treating CNS disorders, diseases or injuries in any given jurisdiction. For clarity, the one (1) sublicense in a given jurisdiction may be a sublicense granted by another sublicensee hereunder.

**2.5 No Implied License.** The licenses and rights granted in this Agreement shall not be construed to confer any rights upon Acorda and its Affiliates by implication, estoppel, or otherwise as to any technology not specifically identified in this Agreement as Licensed Patents.

## ARTICLE 3

### COMPENSATION

**3.1 Upfront Payment.** Within ten (10) days of the Effective Date, Acorda shall pay Institutions an upfront license fee in the amount of [\*\*\*].

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

**3.2 Royalties on Licensed Enzyme Products.** Subject to Sections 3.2(a) and 3.4, Acorda shall pay the Institutions royalties in the amount of [\*\*\*] of the aggregate Net Sales of Licensed Enzyme Products made by Acorda and/or its Affiliates in countries in the Licensed Territory where such sales are covered by a Valid Claim in an issued patent in the Licensed Patents.

**(a) Royalty Rate Adjustment.** If licenses to dominant Third Party patents (that is, patents that claim the Licensed Enzyme Product or its manufacture or use) are required for Acorda or its Affiliates to research, develop, make, have made, use, sell, offer for sale, have sold, import, export, lease and otherwise exploit Licensed Enzyme Products in the Licensed Territory, Acorda may deduct, from the royalty amount payable by Acorda to Institutions, up to [\*\*\*] of the royalty amounts owed the Third Party under such licenses, provided that in no event shall Institutions receive less than [\*\*\*] of the aggregate Net Sales of Licensed Enzyme Products Sold by Acorda and/or its Affiliates in the Licensed Territory.

**(b) Royalties on Sublicenses.** Subject to Section 3.5, if Acorda and/or its Affiliates grants a sublicense under any or all of its rights in the Licensed Patents to a Third Party to research, develop, make, have made, use, sell, offer for sale, have sold, import, export, lease and otherwise exploit Licensed Enzyme Products, then Acorda will pay Institutions a percentage of all Sublicense Royalties received by Acorda and/or its Affiliates from such Third Party sublicensee based on such sublicense, according to the following schedule:

[\*\*\*]

For purposes of this Section 3.2(b) and Section 3.3(a), “commencing” a Clinical Trial shall mean administration of the first dose of a Licensed Product to a subject.

**3.3 Royalties on Licensed Small Molecule Inhibitor Products.** Subject to Section 3.4, Acorda shall pay Institutions royalties in the amount of one-half percent (0.5%) of the

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

aggregate Net Sales of Licensed Small Molecule Products by Acorda and/or its Affiliates in countries in the Licensed Territory where such sales are covered by a Valid Claim in an issued patent in the Licensed Patents.

**(a) Royalties on Sublicenses.** Subject to Section 3.5, if Acorda and/or its Affiliates grants a sublicense under any or all of their rights in the Licensed Patents to a Third Party to research, develop, make, have made, use, sell, offer for sale, have sold, import, export, lease and otherwise exploit Licensed Small Molecule Inhibitor Products, then Acorda will pay Institutions a percentage of all Sublicense Royalties received by Acorda and/or its Affiliates from such Third Party sublicensee based on such sublicense, according to the following schedule:

[\*\*\*]

**3.4 Royalties on Combination Licensed Products.** In the event a Licensed Product is sold in the form of a combination product containing one or more Active Ingredients in addition to the Licensed Product Active Ingredient (hereinafter “**Combination Licensed Product**” ) in countries in the Licensed Territory where such sales are covered by a Valid Claim in an issued patent in the Licensed Patents, then Net Sales for such Combination Licensed Product, for purposes of calculating Earned Royalties due hereunder on Net Sales of Licensed Enzyme Products and Licensed Small Molecule Inhibitor Products (as applicable) by Acorda, will be adjusted by multiplying actual Net Sales of such Combination Licensed Product by the applicable fraction, which will be negotiated in good faith by the Parties with the intention of agreeing upon a fair and equitable formula that reasonably reflects the relative value contributed by the Licensed Product to the total value of the combination in the Combination Licensed Product, as compared to the other Active Ingredients therein. Each Party shall share with the

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

other Parties any information in its possession that is relevant for determining such relative value.

**3.5**        [\*\*\*]

**3.6**        [\*\*\*]

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

## ARTICLE 4

### REPORTS, PAYMENTS AND ACCOUNTING

**4.1 Royalties Reports and Records.** During the term of this Agreement, Acorda shall furnish, or cause to be furnished to the Institutions, written reports for each of Acorda and its Affiliates showing, for each fiscal quarter during the applicable Payment Period, the applicable information as follows:

- (a) the gross sales of all Licensed Products Sold by Acorda and its Affiliates in the Licensed Territory during the reporting period, together with the calculations of Net Sales in accordance with Section 1.16;
- (b) the Earned Royalties payable in Dollars, together with the calculations thereof, which shall have accrued hereunder in respect to such Net Sales;
- (c) the Sublicense Royalties received by Acorda and the portion of such Sublicense Royalties payable to the Institutions in accordance with Sections 3.2(b) and 3.3(a), as applicable;
- (d) the exchange rates, if any, in determining the amount of Dollars payable to the Institutions; and
- (e) the occurrence of any event triggering a milestone payment obligation in accordance with Section 3.6.

Such reports shall be substantially in the form of the template as given in Schedule 1 Part A and shall be due to Institutions within thirty (30) days after the close of the second Acorda fiscal quarter in the applicable Payment Period. Each such report shall: (a) contain a statement in substantially the form "I hereby represent and warrant that this report is true and correct to the best of my knowledge and belief" and; (b) be signed by an officer of Acorda. Acorda shall keep accurate records in sufficient detail to enable Earned Royalties, Sublicense Royalties and other payments payable hereunder to be determined, such records to include without limitation the amounts and source of any deductions made pursuant to Section 3.2(a). Acorda shall be responsible for all Earned Royalties, Sublicense Royalties and other payments that are due

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

Institutions from Acorda's Affiliates and have not been paid by such Affiliates. If a report required pursuant to this Section 4.1 is not submitted to the Institutions by the applicable due date, Institutions may give Acorda notice of such failure, and if Acorda does not provide such report within thirty (30) days of such notice, then Acorda shall pay to the Institutions the amount of [\*\*\*] for each calendar month after such notice that such report remains undelivered.

**4.2 Payee Designation.** All payments made pursuant to Article 3 of this Agreement to be made to Institutions by Acorda (and/or its Affiliates) under this Agreement shall be paid by telegraphic transfer to the account of Cambridge University Technical Services Ltd at Barclays Bank of Bene't Street, Business Centre, PO Box No 2, Cambridge CB2 3PZ, sort code 20-17-19 account number 90532215. The Parties agree that payments made by Acorda and/or its Affiliates and received by CUTS shall satisfy Acorda's payment obligations to the Institutions hereunder.

**4.3 Payment Terms.** All payments made pursuant to Article 3 of this Agreement shall be made in accordance with Schedule 1 Part B. Each report pursuant to Section 4.1 shall be accompanied by payment to CUTS of the Earned Royalties, Sublicense Royalties or other payments due hereunder (as applicable) shown by said report to be due to the Institutions.

**4.4 Non-Payment Terms.** All payments made pursuant to Article 3 of this Agreement shall be made within thirty (30) days after the close of the second Acorda fiscal quarter in the applicable Payment Period, failing which the Institutions may charge interest on any outstanding amount on a daily basis at [\*\*\*] then in force. All payments due pursuant to Article 3 of this Agreement shall be made without deduction of income tax or other taxes charges or duties. Payments due between the end of the final Payment Period and termination or expiry of this Agreement shall be paid within thirty (30) days of said termination or expiry.

**4.5 Right to Audit.** Upon prior written notice to Acorda and not more than once in each Acorda fiscal year, the Institutions shall have the right to engage an independent, nationally-certified auditing firm selected by the Institutions and acceptable to Acorda, which acceptance shall not be unreasonably withheld, to have access during normal business hours of Acorda and on reasonable advance notice, to the applicable books and records of Acorda, as may be reasonably necessary to verify the accuracy of the royalty reports required to be furnished by Acorda pursuant to Section 4.1 of this Agreement. If such audit shows any underpayment of Earned Royalties or Sublicense Royalties by Acorda, then, within thirty (30) days after Acorda's receipt of such report, Acorda shall remit or shall cause its Affiliates to remit to the Institutions:

- (a) the amount of such underpayment; and
- (b) if such underpayment exceeds [\*\*\*] of the total Earned Royalties and/or Sublicense Royalties owed for the fiscal year then being reviewed, the reasonably necessary fees and expenses of such auditing firm performing the audit. Otherwise, such fees and expenses shall be borne solely by Institutions. Any overpayment of Earned Royalties and/or Sublicense Royalties shall be fully creditable against future Earned Royalties and/or Sublicense Royalties payable in any subsequent Payment Period.

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

**4.6 Confidentiality of Records.** All information provided by Acorda, or subject to review under this Article 4, shall be deemed Acorda's Confidential Information (as defined in Section 9.1). The independent, nationally-certified auditing firm shall not disclose to the Institutions or to any Third Party any such Confidential Information, except for any information showing a discrepancy in amount owed to the Institutions, and the Institutions shall not use or disclose any such Confidential Information for any purpose other than determining and enforcing its rights under this Agreement.

**4.7 Currency Restrictions.** Except as otherwise provided hereinafter in this Section 4.7, all Earned Royalties and Sublicense Royalties shall be paid in Dollars. If, at any time, legal or other restrictions imposed by a government or governmental agency or established by a court of competent jurisdiction in a particular country, prevent the prompt remittance and conversion into Dollars of part of or all Earned Royalties and/or Sublicense Royalties with respect to Sales of Licensed Products in such country, Acorda and/or its Affiliates shall have the right and option to make such payments by depositing the amount thereof in local currency to the Institutions' account in a bank or depository in such country.

## ARTICLE 5

### DEVELOPMENT RESPONSIBILITIES; DILIGENCE

**5.1 Institutions' Responsibilities:** During the term of this Agreement, each of CUTS and KCL (or their designees) shall:

(a) transfer to Acorda all relevant and material information and data (except grant applications) in its possession and generated by the Inventors directly relating to the inventions claimed in the Licensed Patents, except to the extent such transfer is prevented by confidentiality obligations or other limitations pursuant to agreements or understandings between each of CUTS and KCL, respectively, and a Third Party, and Acorda shall have the right to use such information and data for the protection and exploitation of the Licensed Patents, including but not limited to the development and commercialization of products covered by the Licensed Patents, in accordance with its rights under the Agreement; and

(b) have the right to review and comment on the design and implementation of any Clinical Trial to be performed by Acorda and/or its Affiliates relating to any Licensed Enzyme Product or Licensed Small Molecule Inhibitor Product, provided that Institutions shall be bound by typical confidentiality restrictions with respect to any information disclosed by Acorda relating thereto.

**5.2 Acorda Responsibilities.** During the term of this Agreement, Acorda and/or its Affiliates shall:

(a) subject to 12.7, give credit to the Institutions (or their designees) for co-authorship of any publications by Acorda and/or its Affiliates relating to the Licensed Patents and acknowledge the efforts of each of Cambridge, CUTS and KCL in creating the Licensed Patents; and

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

(b) be solely responsible for their own expenses incurred in connection with their research and development efforts relating to the Licensed Patents.

**5.3 General Diligence Obligations.**

(a) **Licensed Patents.** Acorda shall use commercially reasonable efforts to conduct further research relating to Licensed Patents from time to time to evaluate their scientific and commercial utility.

(b) **Licensed Products.** Acorda shall, either through its own efforts and/or those of its Affiliates, use commercially reasonable efforts to develop and commercialize, and/or sublicense for development and commercialization, Licensed Enzyme Products and Licensed Small Molecule Inhibitor Products (subject to the limitation on sublicensing in Section 2.4 with respect to Small Molecule Inhibitor Products) as it deems appropriate, in the exercise of its business judgment.

(c) **Share of Information.** Acorda and/or its Affiliates shall share with the Institutions and Cambridge information developed through the research efforts of Acorda and/or its Affiliates relating to the Licensed Patents, except to the extent disclosure is prevented by confidentiality obligations of an agreement between Acorda and/or its Affiliates and a Third Party.

**5.4** [\*\*\*]

**5.5** [\*\*\*]

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

## ARTICLE 6

### PATENTS AND PATENT COSTS

**6.1 Prosecution and Maintenance of Licensed Patents.** The Institutions and Acorda shall work collaboratively to effect and conduct the ongoing patent prosecution and maintenance activities relating to the Licensed Patents. CUTS shall be primarily responsible for overseeing such ongoing patent prosecution and shall pursue such patent prosecution to further Acorda's reasonable commercial interest in the Licensed Patents. CUTS shall provide Acorda with copies of all material documents relating to the filing, prosecution and maintenance of Licensed Patents, including filings and correspondence with patent authorities, in a timely manner, so as to give Acorda an opportunity to comment thereon. Acorda may provide comments to the Institutions regarding such patent prosecution (including but not limited to guidance in the drafting of claims for the Patent Application and other Licensed Patents) and the Institutions will pay due and reasonable consideration to such comments regarding claims relating directly to Licensed Enzyme Products. Acorda agrees to keep any documentation received under this Section 6.1 confidential in accordance with Article 9 herein.

**6.2 Patent Costs.**

**(a) Enzyme Method Patent Costs.** Acorda shall pay for all reasonable costs for prosecution and maintenance of patent filings of the Licensed Patents, to the extent of claims therein relating to enzymatic methods of treating CNS disorders, diseases or injuries ( "**Enzyme Method Patent Costs**" ), incurred by CUTS after the Effective Date of this Agreement.

**(b) Small Molecule Inhibitor Method Patent Costs.** Acorda shall pay a percentage, calculated in accordance with Section 6.2(b)(i), of all reasonable costs for prosecution and maintenance of patent filings of the Licensed Patents, to the extent of claims therein relating to small molecule inhibitors for use in treating CNS disorders, diseases or injuries ( "**Small Molecule Inhibitor Method Patent Costs**" ), incurred by CUTS after the Effective Date of this Agreement.

**(i) Allocation and Reimbursement of Small Molecule Inhibitor Method Patent Costs.** Acorda shall pay the percentage of Small Molecule Inhibitor Method Patents Costs calculated on the basis of the total number of non-exclusive licenses granted by

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

CUTS and/or KCL under the claims in the Licensed Patents relating to small molecule inhibitors for the treatment of CNS disorders, diseases or injuries in accordance with the following formula:

[\*\*\*] CUTS shall promptly notify Acorda in writing of any grant of a non-exclusive license under the claims in the Licensed Patents relating to small molecule inhibitors for the treatment of CNS disorders, diseases or injuries.

**(c) Calculation of Patent Costs.** The Parties acknowledge and agree that it may be difficult to determine patent costs relating to either the use of enzymes, or small molecule inhibitors, for the treatment of CNS disorders, diseases or injuries, given that both methods are included in a single patent application. If any Party disagrees with the allocation of patent costs calculated in accordance with Sections 6.2(a) and 6.2(b), then Institutions and Acorda shall use their good faith efforts to negotiate and determine a reasonable allocation of any patent costs such that Enzyme Method Patent Costs will reasonably reflect prosecution and maintenance costs relating to such enzyme method and the Small Molecule Inhibitor Patent Costs will reasonably reflect prosecution and maintenance costs relating to such small molecule inhibitor method. For the avoidance of doubt, as of the Effective Date, the Small Molecule Inhibitor Patent Costs and the Enzyme Method Patent Costs each constitute [\*\*\*] since they are combined in one patent application, provided, however, that such percentage may change during the term of this Agreement if, for example, the Patent Application is separated into multiple patent applications.

**6.3 Acorda's Payment Terms.** CUTS shall seek Acorda written approval prior to commitment of Enzyme Method Patent Costs and Small Molecule Inhibitor Method Patent Costs where practical and Acorda shall give or withhold approval within ten (10) calendar days. Where impractical to seek Acorda approval in the time available, CUTS shall have discretion to assume Acorda approval and commit but limit any such commitment of Enzyme Method Patent Costs and Small Molecule Inhibitor Method Patent Costs to [\*\*\*].

**6.4 Non-Payment Terms.** In the event that payment is not received by CUTS within thirty (30) days of receipt by Acorda of an invoice for Enzyme Method Patent Costs and/or Small Molecule Inhibitor Method Patent Costs pursuant to Article 6 of this Agreement, the Institutions may charge interest on any outstanding amount on a daily basis at [\*\*\*] then in force. All payments due pursuant to Article 6 of this Agreement shall be made without deduction of income tax or other taxes charges or duties. Payments due between the end of the final Payment Period and termination or expiry of this Agreement shall be paid within thirty (30) days of said termination or expiry.

**6.5** [\*\*\*]

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

## ARTICLE 7

### INFRINGEMENT

**7.1 Enforcement of Licensed Patents Relating to Enzymes.** If either Acorda and/or its Affiliates or the Institutions become aware of a product made, used or sold in the Licensed Territory, which it believes infringes a Valid Claim relating to any pharmaceutical product containing or directly activating an enzyme, including but not limited to chondroitinase, to treat CNS disorders, diseases or injuries (the “**Enzyme Method**”), the Party obtaining such knowledge shall promptly advise the other Parties of all relevant facts and circumstances pertaining to the potential infringement. Acorda shall have the first right, but not the obligation, to enforce any patent rights within the Licensed Patents against such infringement, at its own expense. The Institutions shall agree to be joined with Acorda in any such legal action subject to being indemnified and secured in a reasonable manner as to any costs, damages, expenses or other liability and shall have the right to be separately represented by their own counsel at their own expense. Before starting legal action in accordance with this Section 7.1 or agreeing to any settlement, Acorda shall consult the Institutions and consider their views about the advisability of the action or settlement, its effect on the public interest and how the action should be conducted.

(a) **Recovery.** Any damages or costs recovered in connection with any action filed by Acorda under this Section 7.1 which exceed Acorda’s out-of-pocket costs and expenses of litigation, shall be deemed to be Net Sales of Licensed Enzyme Products in the fiscal quarter received by Acorda. Earned Royalties on such Net Sales shall be payable by Acorda to Institutions in accordance with the terms of this Agreement.

(b) **Backup Enforcement Right of Institutions.** If Acorda does not, within one hundred twenty (120) days after receiving notice from Institutions of a potential infringement, or providing Institutions with notice of such infringement, either (i) effect the

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

termination of such infringement, or (ii) institute an action to prevent continuation thereof and, thereafter prosecute such action diligently, or if Acorda notifies Institutions that it does not plan to terminate the infringement or institute such action, then Institutions shall have the right but not the obligation to do so at their own expense; provided however, that Institutions shall first consult with Acorda and give due consideration to Acorda's reasons for not instituting actions to terminate or otherwise prevent continuation of such infringement. If Institutions decide to pursue such infringement, Acorda shall cooperate with Institutions in such effort, at Institutions' expense, including being joined as a party to such action if necessary. Institutions shall be entitled to retain all damages or costs awarded to Institutions in such action.

**7.2 Enforcement of Licensed Patents Relating to Small Molecule Inhibitors.** If either Acorda and/or its Affiliates or

Institutions become aware of a product made, used or sold in the Licensed Territory, which it believes infringes a Valid Claim relating to small molecule inhibitors for use in treating CNS disorders, diseases or injuries (the "**Small Molecule Inhibitor Method**" ), the Party obtaining such knowledge shall promptly advise the other Parties of all relevant facts and circumstances pertaining to the potential infringement. Institutions shall have the first right, but not the obligation, to enforce any patent rights within the Licensed Patents against such infringement, at its own expense. Acorda shall agree to be joined with the Institutions in any such legal action subject to being indemnified and secured in a reasonable manner as to any costs, damages, expenses or other liability and shall have the right to be separately represented by their own counsel at their own expense. Before starting legal action in accordance with this Section 7.2 or agreeing to any settlement, the Institutions shall consult Acorda and consider their views about the advisability of the action or settlement, its effect on the public interest and how the action should be conducted.

**(a) Recovery.** Any damages or costs recovered in connection with any action filed by Institutions under this

Section 7.2 which exceed Institutions' out-of-pocket costs and expenses of litigation, shall be divided equally among Institutions, Acorda and any Third Party(ies) holding a non-exclusive license under Institutions' rights in Licensed Patents relating to small molecule inhibitors for use in treating CNS disorders, diseases or injuries during the term of such infringement.

**(b) Backup Enforcement Right of Acorda.** If Institutions do not, within one hundred eighty (180) days after

receiving notice from Acorda of a potential infringement, or providing Acorda with notice of such infringement, either (i) effect the termination of such infringement, or (ii) institute an action to prevent continuation thereof and, thereafter prosecute such action diligently, or if Institutions notify Acorda that it does not plan to terminate the infringement or institute such action, then Acorda shall have the right but not the obligation to do so at its own expense; provided however, that Acorda shall first consult with Institutions and give due consideration to Institutions' reasons for not instituting actions to terminate or otherwise prevent continuation of such infringement. If Acorda decides to pursue such infringement, Institutions shall cooperate with Acorda in such effort, at Acorda's expense, including being joined as a party to such action if necessary. Acorda shall be entitled to retain all damages or costs awarded to Acorda in such action.

**7.3 Enforcement of Licensed Patents Generally.** If either Acorda or Institutions become aware of a product made, used or

sold in the Licensed Territory, which it believes

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

infringes a Valid Claim that does not relate specifically to either the Enzyme Method or the Small Molecule Inhibitor Method, the Party obtaining such knowledge shall promptly advise the other Parties of all relevant facts and circumstances pertaining to the potential infringement. Acorda shall have the first right, but not the obligation, to enforce any patent rights within the Licensed Patents against such infringement, at its own expense. The Institutions shall agree to be joined with Acorda in any such legal action subject to being indemnified and secured in a reasonable manner as to any costs, damages, expenses or other liability and shall have the right to be separately represented by their own counsel at their own expense. Before starting legal action in accordance with this Section 7.3 or agreeing to any settlement, Acorda shall consult the Institutions and consider their views about the advisability of the action or settlement, its effect on the public interest and how the action should be conducted.

**(a) Recovery.** Any damages or costs recovered in connection with any action filed by Acorda under this Section 7.3 which exceed Acorda's out-of-pocket costs and expenses of litigation, shall be deemed to be Net Sales of Licensed Small Molecule Inhibitor Products in the fiscal quarter received by Acorda. Earned Royalties on such Net Sales shall be payable by Acorda to Institutions in accordance with the terms of this Agreement.

**(b) Backup Enforcement Right of Institutions.** If Acorda does not, within one hundred eighty (180) days after receiving notice from Institutions of a potential infringement, or providing Institutions with notice of such infringement, either (i) effect the termination of such infringement, or (ii) institute an action to prevent continuation thereof and, thereafter, prosecute such action diligently, or if Acorda notifies Institutions that it does not plan to terminate the infringement or institute such action, then Institutions shall have the right but not the obligation to do so at their own expense; provided however, that Institutions shall first consult with Acorda and give due consideration to Acorda's reasons for not instituting actions to terminate or otherwise prevent continuation of such infringement. If Institutions decide to pursue such infringement, Acorda shall cooperate with Institutions in such effort, at Institutions' expense, including being joined as a party to such action if necessary. Institutions shall be entitled to retain all damages or costs awarded to Institutions in such action.

#### **7.4 Invalidity or Unenforceability Defenses or Actions.**

**(a)** If a Third Party asserts, as a defense or as a counterclaim in any infringement action under Sections 7.1, 7.2 or 7.3, that any Licensed Patent is invalid or unenforceable, or that an interference should be declared with respect to a Licensed Patent, then the Parties shall promptly meet (which meeting may at any Party's request be by telephone conference or videoconference) to discuss the response to such defense or defense of such counterclaim or action (as applicable) and shall cooperate with one another in such response or defense. The Party or Parties that are the plaintiffs in the underlying suit or action against such Third Party shall have the initial right to respond to such defense or defend against such counterclaim (as applicable), *provided* that such response or defense shall be conducted in collaboration with the other Parties, to the extent that the other Parties' intellectual property rights or rights under this Agreement are the subject of such invalidity or unenforceability defense or counterclaim. The Party plaintiff shall involve such other Party(ies) in all decisions as to such response or defense, and in any event such Party plaintiff shall not settle or otherwise compromise such defense or counterclaim in any way that adversely affects such other Party's

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

intellectual property rights or rights under this Agreement without such other Party's written consent, not to be unreasonably withheld or delayed.

**(b)** Similarly, if a Third Party asserts, in a declaratory judgment action or similar action or claim filed by such Third Party that any Licensed Patent is invalid or unenforceable or that an interference should be declared with respect to a Licensed Patent, then the Parties shall promptly meet (which meeting may at any Party's request be by telephone conference or videoconference) to discuss the defense of such action or claim and shall cooperate with one another in such defense. The Party that is the defendant in such claim, suit or action shall have the initial right to defend against same, *provided* that such defense shall be conducted in collaboration with the other Parties and a process under which each Party shall have a reasonable opportunity to participate in such defense shall be established, and in any event Acorda shall at all times be permitted to intervene in such defense, at its expense, and *provided further* that to the extent that any other Party's intellectual property rights or interests under this Agreement are the subject of, or materially impacted by, such invalidity or unenforceability claim, suit or action, the defending Party shall involve such other Party in all decisions as to such defense, and in any event such defending Party shall not settle or otherwise compromise such defense in any way that adversely affects such other Party's intellectual property rights or its rights under this Agreement without such other Party's written consent, not to be unreasonably withheld or delayed.

**(c)** The Party defending any claim or action under this Section 7.4 shall be responsible for [\*\*\*] of the out-of-pocket and reasonable costs and expenses of any such defenses, provided that if Acorda is defending, Acorda may credit such defense costs and expenses against royalties owed to Institutions under Sections 3.2 and 3.3.

**7.5 Third Party Litigation.** If a Third Party institutes an infringement suit or action against Acorda and/or its Affiliate and/or sublicensee alleging that the manufacture, use or sale of any Licensed Product by Acorda and/or an Affiliate and/or sublicensee, in a country in the Licensed Territory infringes one or more patent or other intellectual property right held by such Third Party (an "**Infringement Suit**" ), Acorda (or such Affiliate or sublicensee) shall have the right to defend and settle such Infringement Suit at its sole expense. In such event, the Parties shall meet (which meeting may at any Party's request be by telephone conference or videoconference) and discuss in good faith the best defenses to such Infringement Suit, and Institutions shall, subject to being indemnified against any liability and having the right to be separately represented by their own counsel at their own expense, provide Acorda with reasonable assistance and cooperation in defending such Infringement Suit at Acorda's sole expense. Acorda shall have the right to credit against royalties owed to the Institutions under Sections 3.2 and 3.3 [\*\*\*] of any costs and expenses of such defense and settlement, but solely to the extent such costs and expenses relate directly to the defense and settlement (if any) of any claims or allegations relating directly to infringement by the Licensed Product. If, however, such Third Party makes a payment to reimburse Acorda (and/or its Affiliate and/or sublicensee) for such costs and expenses of defending such infringement suit or action, then Acorda will pay to Institutions, out of such Third Party payment, a *pro rata* amount (i.e., the ratio of the amount of the Third Party payment compared to the total defense costs and expenses), but not to exceed the total amount that Acorda credited against royalties owed under the previous sentence. Notwithstanding the foregoing, Acorda (or such Affiliate or sublicensee)

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

shall not settle any such Infringement Suit in a manner that materially adversely impacts the Licensed Patents without Institutions' prior written consent, such consent not to be unreasonably withheld or delayed. For clarity, any costs and expenses of enforcing Licensed Patents, including those costs relating to the assertion of a counterclaim alleging infringement of Licensed Patents by a Third Party in response to an Infringement Suit, shall not be included in the calculation and allocation of costs and expenses under this Section 7.5, but instead shall be included in the calculation and allocation of costs and expenses under Section 7.1, 7.2 or 7.3, as applicable.

## ARTICLE 8

### INDEMNIFICATION AND LIMITATION OF LIABILITY

**8.1 Limitation of Liability.** NO PARTY SHALL BE LIABLE TO ANOTHER PARTY, ITS AFFILIATES, CUSTOMERS OR SUBLICENSEES FOR ANY COMPENSATORY, SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL OR EXEMPLARY DAMAGES ARISING FROM OR RELATING TO ANY BREACH OF THIS AGREEMENT OR THE MANUFACTURE, TESTING, LABELING, USE OR SALE OF LICENSED PRODUCTS. NOTWITHSTANDING THE FOREGOING, NOTHING IN THIS SECTION 8.1 IS INTENDED TO LIMIT OR RESTRICT THE INDEMNIFICATION RIGHTS OR OBLIGATIONS OF ANY PARTY UNDER SECTIONS 8.2, 8.3 OR 8.4, OR DAMAGES AVAILABLE FOR BREACHES OF CONFIDENTIALITY OBLIGATIONS IN ARTICLE 9.

**8.2 Indemnification by Acorda.**

(a) **Indemnification of CUTS.** Acorda and/or its Affiliate shall defend, indemnify and hold harmless CUTS and the University of Cambridge, and their respective directors, students and employees (the "CUTS Indemnitees"), from and against any and all losses, liabilities, expenses or damages (including reasonable attorneys' fees) (collectively, the "Losses") resulting from claims made or legal proceedings instituted, made or brought against any CUTS Indemnitee by a Third Party arising or alleged to arise by reason of, or in connection with, any and all personal injury (including death) and property damage caused by the manufacture, testing, design, use, Sale or labeling of any Licensed Products by Acorda or its Affiliates, contractors, agents or sublicensees, except to the extent of any Losses that arise from the negligence or intentional misconduct of any CUTS Indemnitee.

(b) **Indemnification of KCL.** Acorda shall defend, indemnify and hold harmless KCL and its directors, students and employees (the "KCL Indemnitees"), from and against any and all Losses resulting from claims or legal proceedings instituted, made or brought against any KCL Indemnitee by a Third Party arising or alleged to arise by reason of, or in connection with, any and all personal injury (including death) and property damage caused by the manufacture, testing, design, use, Sale or labeling of any Licensed Products by Acorda or its Affiliates, contractors, agents or sublicensees, except to the extent of any Losses that arise from the negligence or intentional misconduct of any KCL Indemnitee.

**8.3 Indemnification by CUTS.** CUTS shall defend, indemnify and hold harmless Acorda and its Affiliates, directors, officers, agents, contractors, sublicensees and employees (the

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

**“Acorda Indemnitees”**) from and against any and all Losses resulting from claims or legal proceedings instituted, made or brought against any Acorda Indemnitee by a Third Party arising or alleged to arise by reason of, or in connection with, any breach of Section 12.2 by CUTS, except to the extent of any Losses that arise from the gross negligence or intentional misconduct of any Acorda Indemnitee, and in any such event, CUTS liability to the Acorda Indemnitees shall not exceed the total amount of the portion of all payments paid by Acorda to CUTS under this Agreement that CUTS retains and is not subsequently paid by CUTS to KCL; provided however, and CUTS hereby agrees, that such limitation shall not exclude or restrict CUTS liability for any fraud or other intentional misrepresentation, or death and personal injury caused by gross negligence or wilful misconduct of any CUTS Indemnitee.

**8.4 Indemnification by KCL.** KCL shall defend, indemnify and hold harmless Acorda Indemnitees from and against any and all Losses resulting from claims or legal proceedings instituted, made or brought against any Acorda Indemnitee by a Third Party arising or alleged to arise by reason of, or in connection with, any breach of Section 12.1 by KCL, except to the extent of any Losses that arise from the gross negligence or intentional misconduct of any Acorda Indemnitee, and in any such event, KCL liability to the Acorda Indemnitees shall not exceed the total amount of the portion of all payments paid by Acorda to KCL under this Agreement; provided however, and KCL hereby agrees, that such limitation shall not exclude or restrict KCL liability for any fraud or other intentional misrepresentation, or death and personal injury caused by gross negligence or wilful misconduct of any KCL Indemnitee.

**8.5 General Conditions of Indemnification.** To be eligible to be indemnified hereunder, the indemnified Party shall provide the indemnifying Party with prompt notice of the claim giving rise to the indemnification obligation pursuant to this Article 8 and the exclusive ability to defend (with the reasonable cooperation of the indemnified Party) or settle any such claim; *provided, however,* that the indemnifying Party shall not enter into any settlement for damages other than monetary damages without the indemnified Party’s prior written consent, such consent not to be unreasonably withheld or delayed. The indemnified Party shall have the right to participate, at its own expense and with counsel of its choice, in the defense of any claim or suit that has been assumed by the indemnifying Party.

**8.6 Insurance.** Each Party shall maintain reasonable levels of insurance or other adequate forms of protection to satisfy its respective indemnification obligations under this Agreement.

## ARTICLE 9

### CONFIDENTIALITY

**9.1 Nondisclosure of Confidential Information.** Except as otherwise provided hereunder, during the term of this Agreement and for a period of five (5) years thereafter, each Party (the “**Receiving Party**”) agrees to retain in strict confidence, use only for the purposes of this Agreement, and not disclose any written information or data supplied by or on behalf of another Party to such Receiving Party under this Agreement and marked as proprietary or confidential (“**Confidential Information**”). Any written information, materials or data disclosed by one Party to another Party pursuant to the Confidential Disclosure Agreement

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

among the Parties dated July 3, 2002 shall be deemed the disclosing Party's Confidential Information under this Agreement and shall be subject to the provisions of this Article 9.

**9.2 Permitted Disclosure.** It shall not be a breach of this Article 9 if the Receiving Party is required to disclose another Party's Confidential Information pursuant to an order of the government or a court of competent jurisdiction, provided that the Receiving Party (a) provides such other Party with adequate notice of the required disclosure, (b) cooperates with such other Party's efforts to protect its Confidential Information with respect to such disclosure and (c) takes all reasonable measures requested by such other Party to challenge or to modify the scope of such required disclosure. To the extent that it is reasonably necessary to fulfill its obligations or exercise its rights under this Agreement, or any rights which survive termination or expiration hereof, the Receiving Party may disclose Confidential Information of such other Party to its Affiliates, sublicensees, consultants, outside contractors and clinical investigators provided that such entities or persons are bound by obligations of confidentiality and non-use no less restrictive than the obligations in this Agreement and agree to use the Confidential Information only for such purposes as the Receiving Party is authorized to use the Confidential Information hereunder.

**9.3 Exceptions.** The obligation of a Party under Section 9.1 not to use or disclose another Party's Confidential Information shall not apply to any part of such Confidential Information that the Receiving Party can establish by competent written proof:

(a) at the time of disclosure is in the public domain or after disclosure comes into the public domain other than by unauthorized acts of the Receiving Party obligated not to disclose such Confidential Information and/or its Affiliates and/or sublicensees in contravention of this Agreement;

(b) is disclosed to the Receiving Party, its Affiliates or sublicensees by a Third Party having the right to disclose it;

(c) can be shown by written proof to already have been in the possession of the Receiving Party, its Affiliates or sublicensees prior to disclosure under this Agreement; or

(d) results from the research and development by the Receiving Party, its Affiliates or sublicensees, independent of disclosures from the disclosing Party of this Agreement, provided that the persons developing such information have not had exposure to the Confidential Information received from the disclosing Party.

**9.4 Confidential Nature of Terms of Agreement.** Except as expressly provided herein, each Party agrees not to disclose any terms of this Agreement to any Third Party without the consent of the other Parties; provided, however, that disclosures may be made as required by securities or other applicable laws, or to actual or prospective investors, sublicensees, corporate or merger partners or acquirers, or to a Party's accountants, attorneys, and other professional advisors, and, in the case of the Institutions, to The Wellcome Trust and in the case of KCL to IP2IPO Limited, provided that such individuals or entities expressly agree to keep the terms of the Agreement confidential.

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

## ARTICLE 10

### TERM AND TERMINATION

**10.1 Term.** Unless sooner terminated as otherwise provided in this Agreement, the term of this Agreement shall commence on the Effective Date hereof and shall continue in full force and effect until the expiration of the last to expire Valid Claim and on such date this Agreement and the licenses granted hereunder shall automatically become non-exclusive, worldwide, fully paid-up, irrevocable licenses upon such expiry.

**10.2 Termination by Acorda.** Acorda may terminate this Agreement at any time upon ninety (90) days prior written notice to each of CUTS and KCL.

**10.3 Termination by Institutions.** The Institutions may terminate this Agreement forthwith by giving written notice to Acorda if Acorda and/or its Affiliates and/or agents and/or sub-contractors and/or sublicensees commence(s) legal proceedings to challenge the validity or ownership of any of the Licensed Patents.

**10.4 Termination by any Party**

(a) **Material Breach.** CUTS and KCL may terminate this Agreement if Acorda materially breaches its material obligations under this Agreement (e.g., material failure to pay CUTS and KCL pursuant to the terms of this Agreement) and Acorda fails to cure the breach within sixty (60) days after receipt of written notice from the non-breaching Party, such notice specifying in detail the nature of the alleged breach. Acorda may terminate this Agreement if one or both of the other Parties materially breaches its material obligations under this Agreement and such breaching Party(ies) fails to cure the breach within sixty (60) days after receipt of written notice from Acorda, such notice specifying in detail the nature of the alleged breach.

(b) **Cease of Business.** Without prejudice to any other right or remedy, any Party may terminate this Agreement at any time by notice in writing to the other Parties, if any Party ceases to carry on business, is declared by a court of competent jurisdiction to be bankrupt, or an order made or a resolution passed for the winding up of any Party or upon the appointment of a liquidator of that Party.

**10.5 Consequences of Termination.** No termination of this Agreement shall relieve Acorda of the liability for payment of any Earned Royalties due for Licensed Products sold prior to the effective date of such termination or for Sublicense Royalties paid or payable prior to the effective date of such termination. Notwithstanding anything herein to the contrary, upon any termination or expiration of this Agreement, Acorda shall have the right to use or sell Licensed Products on hand on the date of such termination or expiration and to complete Licensed Products in the process of manufacture at the time of such termination or expiration and use or sell the same, provided that Acorda shall submit the applicable royalty reports described in Section 4.1, along with Earned Royalty and/or Sublicense Royalty payments in accordance with Sections 3.2, 3.3 and 3.4 for Sale of such Licensed Products. For clarity, upon termination of

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

this Agreement under Section 10.2 or 10.3, Institutions are free to enter into a commercial license or similar agreement with any Third Party with respect to such Licensed Patents, or otherwise exploit such Licensed Patents. Further, upon the Institutions written request, the Parties shall negotiate in good faith the terms of an agreement between them on reasonable commercial terms to enable the Institutions to arrange for further exploitation of the Licensed Products as they exist at the date of termination, including to provide the Institutions with all improvements, information and results created or developed by Acorda and/or its Affiliates and/or their agents.

## **ARTICLE 11**

### **ASSIGNMENT**

No Party may assign or transfer this Agreement or any rights or obligations hereunder without the prior written consent of the other Parties, except Acorda may make such an assignment without Institutions' written consent to an Affiliate or to a successor to all, or substantially all, of the business of Acorda, whether in a merger, sale of stock, sale of assets or other transaction, provided, however, that Acorda may not assign or transfer this Agreement or any rights or obligations hereunder without Institutions' written consent to such a successor entity where a significant portion of such entity's commercial business activity constitutes: (a) the manufacture and/or sale of military arms or weapons, or (b) the manufacture and/or sale of tobacco containing products. Any permitted successor or assignee of rights and/or obligations hereunder shall, in a writing to the other Parties, expressly assume performance of such rights and/or obligations. Any assignment or attempted assignment by any Party in violation of the terms of this Article 11 shall be null and void and of no legal effect.

## **ARTICLE 12**

### **MISCELLANEOUS**

**12.1** KCL confirms to Acorda that with respect to the Patent Application and/or the Licensed Patents:

(a) as far as KCL is aware, having neither commissioned nor performed any searches or investigations into the existence of any third party rights, KCL owns its interests in the Patent Application free and clear of all licenses and encumbrances and the like of any nature whatsoever;

(b) KCL is not currently involved in any litigation, and is unaware of any pending litigation proceedings, relating to Institutions' ownership of the Patent Application;

(c) this Agreement is a legal and valid obligation of, binding upon, and enforceable against KCL in accordance with the terms of this Agreement;

(d) the execution, delivery and performance of this Agreement does not as of the Effective Date conflict with, constitute a breach of, or violate any arrangement, understanding or agreement to which KCL is a party or by which KCL is bound;

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

- (e) KCL has not granted to a Third Party any right or interest in any of the Licensed Patents that is inconsistent with the rights granted to Acorda herein and shall not grant a Third Party any such right during the term of this Agreement;
- (f) KCL has the right to enter into this Agreement, grant the rights granted herein and perform the obligations set forth in this Agreement; and
- (g) KCL is the legal owner of its right, title and interest in the inventions developed by its respective Inventors giving rise to the Licensed Patents.

**12.2** CUTS confirms to Acorda that with respect to the Patent Application and/or the Licensed Patents:

- (a) as far as CUTS is aware, having performed no searches or investigations into the existence of any third party rights, CUTS owns its interests in the Patent Application free and clear of all licenses and encumbrances and the like of any nature whatsoever;
- (b) CUTS is not currently involved in any litigation, and is unaware of any pending litigation proceedings, relating to Institutions' ownership of the Patent Application;
- (c) this Agreement is a legal and valid obligation of, binding upon, and enforceable against CUTS in accordance with the terms of this Agreement;
- (d) the execution, delivery and performance of this Agreement does not as of the Effective Date conflict with, constitute a breach of, or violate any arrangement, understanding or agreement to which CUTS is a party or by which CUTS is bound;
- (e) CUTS has not granted to a Third Party any right or interest in any of the Licensed Patents that is inconsistent with the rights granted to Acorda herein and shall not grant a Third Party any such right during the term of this Agreement;
- (f) CUTS has the right to enter into this Agreement, grant the rights granted herein and perform the obligations set forth in this Agreement; and
- (g) CUTS is the legal owner of its right, title and interest in inventions developed by Professor James Fawcett giving rise to the Licensed Patents.

**12.3** Acorda confirms to Institutions that:

- (a) this Agreement is a legal and valid obligation of, binding upon, and enforceable against Acorda in accordance with the terms of this Agreement;
- (b) Acorda has the right to enter into this Agreement and perform the obligations set forth in this Agreement;
- (c) the execution, delivery and performance of this Agreement does not conflict with, constitute a breach of, or violate any arrangement, understanding or agreement to which Acorda is a party or by which Acorda is bound; and

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

**(d)** Acorda shall be responsible for the performance by its Affiliates in accordance with the terms of this Agreement.

**12.4 Disclaimer of Warranties.** CUTS AND KCL MAKE NO EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ASSUMES NO RESPONSIBILITIES WHATSOEVER WITH RESPECT TO THE USE, SALE, OR OTHER DISPOSITION BY ACORDA AND/OR ITS AFFILIATES AND/OR ITS SUBLICENSEES OF LICENSED PRODUCT(S).

**12.5 Independent Contractor.** Acorda's relationship to Institutions shall be that of a licensee only. None of the Parties shall be considered to be an employee or agent of another, nor shall this Agreement constitute, create or in any way be interpreted as a joint venture, partnership or formal business organization of any kind. In that respect, no Party shall have the authority to execute any agreement on behalf of another Party, nor shall any Party have any authority to negotiate any agreement, except as such other Party may expressly direct in writing.

**12.6 Patent Marking.** Acorda agrees to mark the appropriate patent number or numbers on all Licensed Products made or Sold in the Licensed Territory in accordance with all applicable governmental laws, rules and regulations, and to require its sublicensees to do the same.

**12.7 Use of Names.** Acorda shall obtain the prior written approval of KCL or CUTS (as applicable), such approval not to be unreasonably withheld, prior to making use of the name, trademarks, logos or symbols of KCL, the University of Cambridge, CUTS (an authorized designee of the University of Cambridge for purposes of this Agreement), or their respective employees, students and faculty members for any commercial purpose, except as required to comply with law, regulation or court order. Institutions shall obtain the prior written approval of Acorda, such approval not to be unreasonably withheld, prior to making use of the name, trademarks, logos or symbols of Acorda for any commercial purpose, except as required to comply with law, regulation or court order.

**12.8 Governing Law.** This Agreement and all amendments, modifications, alterations, or supplements hereto, and the rights of the Parties hereunder, shall be construed under and governed by the laws of England and shall be subject to the exclusive jurisdiction of the English courts to which the Parties hereby submit, except that a Party may seek interim injunction in any court of competent jurisdiction.

**12.9 Entire Agreement.** This Agreement, the Sponsored Research Agreement and the Material Transfer Agreements of even date constitutes the entire, final and exclusive agreement among the Parties hereto, and supercedes and terminates all prior agreements and understandings between the Parties, with respect to the subject matter hereof and thereof, whether written or oral, including the Confidential Disclosure Agreement among the Parties dated July 3, 2002. No subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the Parties unless reduced to writing and signed by an authorized officer of each Party.

**12.10 Survival.** Articles 1, 8, 9, and 12, and Sections 4.5, 4.6, 5.2 and 10.5 shall survive termination of this Agreement for any reason.

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

**12.11 Severability.** All rights and restrictions contained herein may be exercised and shall be applicable and binding only to the extent that they do not violate any applicable national laws and are intended to be limited to the extent necessary so that they will not render this Agreement illegal, invalid or unenforceable. If any provision or portion of any provision of this Agreement, not essential to the commercial purpose of this Agreement, shall be held to be illegal, invalid or unenforceable by a court of competent jurisdiction, it is the intention of the Parties that the remaining provisions or portions thereof shall constitute their agreement with respect to the subject matter hereof, and all such remaining provisions, or portions thereof, shall remain in full force and effect. To the extent legally permissible, the Parties shall use good faith efforts to agree to replace any illegal, invalid or unenforceable provision of this Agreement with a valid provision that shall implement as much as permitted the commercial intent of the illegal, invalid, or unenforceable provision. If any provision essential to the commercial purpose of this Agreement is held to be illegal, invalid or unenforceable and cannot be replaced by a valid provision which will implement the commercial intent of this Agreement, the Party(ies) who is the beneficiary of such illegal, invalid or unenforceable provision has the right to terminate this Agreement upon written notice, effective upon receipt, to the other Parties.

**12.12 Notices.** Any notice required or permitted to be given under this Agreement shall be in writing, shall specifically refer to this Agreement and shall be deemed to have been sufficiently given and received for all purposes (a) upon personal delivery to the appropriate address, (b) five (5) days after the date of mailing when sent first class certified or registered mail, postage prepaid, (c) three (3) business days after sending by internationally recognized express delivery service, or (d) one (1) business day after facsimile transmission to the appropriate number(s) below, with transmission confirmed by the recipient. Unless otherwise specified in writing in accordance with this Section 12.12, the mailing addresses and facsimile numbers of the Parties shall be as set forth below.

For Acorda:

Acorda Therapeutics, Inc.  
15 Skyline Drive  
Hawthorne, New York 10532 USA  
Attention: Harold Safferstein, Vice President,  
Business Development  
Fax Number: (914) 347-4560

For CUTS:

Cambridge University Technical Services Limited  
c/o Research Services Division  
University of Cambridge  
16 Mill Lane  
Cambridge CB2 1SB, UK  
Attention: Director  
Fax Number: +44 (0)12 2333 2988

For KCL:

King's College London  
KCL Enterprises Ltd  
James Clerk Maxwell Building  
57 Waterloo Road  
London, SE1 8WA, UK

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

Attention: Director of Technology Transfer  
Fax Number: +44 (0)20 7848 3320

**12.13 Force Majeure.** Any delays in, or failure of performance of any Party to this Agreement, shall not constitute a default hereunder, or give rise to any claim for damages, if and to the extent caused by occurrences beyond the control of the Party affected; including, but not limited to, acts of God, acts of terrorism, strikes or other concerted acts of workmen, civil disturbances, fires, floods, earthquakes, explosions, riots, war, rebellion, sabotage, acts of governmental authority or failure of governmental authority to issue licenses or approvals which may be required. The Party suffering such occurrence shall immediately notify the other Parties as soon as practicable and any time for performance hereunder shall be extended by the actual time of delay caused by the occurrence, provided that the Party affected by such occurrence uses reasonable efforts to overcome or avoid such delay.

**12.14 Farther Assurances.** Each Party agrees to execute, acknowledge and deliver such further instruments, and to do all such other acts, as may be necessary or appropriate in order to carry out the purposes and intent of this Agreement.

**12.15 Headings.** The headings appearing in this Agreement have been inserted for convenience of reference only and shall not affect the construction, meaning or interpretation of this Agreement or any of its terms and conditions.

**12.16 No Waiver.** The failure by any Party, at any time, or for any period of time, to enforce any of the provisions of this Agreement, shall not be construed as a waiver of such provisions or as a waiver of any Party's rights thereafter to enforce each and every such provision of this Agreement.

**12.17 Construction.** This Agreement has been prepared jointly by all Parties and shall not be strictly construed against any Party.

**12.18 Counterparts.** This Agreement may be executed in one (1) or more counterparts, each of which shall be deemed an original, but all of which shall constitute one (1) and the same instrument.

[ *Signature Page Follows* ]

Certain portions of this Exhibit have been omitted pursuant to a request for confidentiality. Such omitted portions, which are marked with brackets [ ] and an asterisk\*, have been separately filed with the Commission.

**IN WITNESS WHEREOF**, Acorda, CUTS and KCL have caused this Agreement to be executed as of the Effective Date by their duly authorized representatives below.

**ACORDA THERAPEUTICS, INC.**

**CAMBRIDGE UNIVERSITY TECHNICAL  
SERVICES LIMITED**

By: /s/ Hank Safferstein  
Print Name: Hank Safferstein  
Title: V.P. Business Dev.

By: /s/ R. C. Jennings  
Print Name: DR. R. C. Jennings  
Title: DIRECTOR

**KING'S COLLEGE LONDON**

By: /s/ SUSAN SMITH  
Print Name: SUSAN SMITH  
Title: DIRECTOR OF TECHNOLOGY TRANSFER

29

**Exhibit 10.35**

**PROMISSORY NOTE  
1-28-04  
(Date)**

FOR VALUE RECEIVED, **Acorda Therapeutics, Inc.** an other located at the address stated below ("Maker") promises, jointly and severally if more than one, to pay to the order of **General Electric Capital Corporation** or any subsequent holder hereof (each, a "Payee") at its office located at **83 Wooster Heights Road, 5th Fl. Danbury, CT 06810** or at such other place as Payee or the holder hereof may designate, the principal sum of Six Million and 00/100 Dollars (\$6,000,000.00), with interest on the unpaid principal balance, from the date hereof through and including the dates of payment, at a fixed interest rate of Nine and Ninety Three Hundredths percent (9.93%) per annum, to be paid in lawful money of the United States, in Thirty Six (36) consecutive monthly installments of principal and interest as follows:

<b>Periodic Installment</b>	<b>Amount</b>
Six (6)	\$49,650.03
Twenty Nine (29)	\$226,673.20

each ("Periodic Installment") and a final installment which shall be in the amount of the total outstanding principal and interest. The first Periodic Installment shall be due and payable on 3-1-05 and the following Periodic Installments and the final installment shall be due and payable on the same day of each succeeding month (each, a "Payment Date"). Such installments have been calculated on the basis of a 360 day year of twelve 30-day months. Each payment may, at the option of the Payee, be calculated and applied on an assumption that such payment would be made on its due date.

The acceptance by Payee of any payment which is less than payment in full of all amounts due and owing at such time shall not constitute a waiver of Payee's right to receive payment in full at such time or at any prior or subsequent time.

The Maker hereby expressly authorizes the Payee to insert the date value is actually given in the blank space on the face hereof and on all related documents pertaining hereto.

This Note may be secured by a security agreement, chattel mortgage, pledge agreement or like instrument (each of which is hereinafter called a "Security Agreement").

Time is of the essence hereof. If any installment or any other sum due under this Note or any Security Agreement is not received within ten (10) days after its due date, the Maker agrees to pay, in addition to the amount of each such installment or other sum, a late payment charge of five percent (5%) of the amount of said installment or other sum, but not exceeding any lawful maximum. If (i) Maker fails to make payment of any amount due hereunder within ten (10) days after the same becomes due and payable; or (ii) Maker is in default under, or fails to perform under any term or condition contained in any Security Agreement, then the entire principal sum remaining unpaid, together with all accrued interest thereon and any other sum payable under this Note or any Security Agreement, at the election of Payee, shall immediately become due and payable, with interest thereon at the lesser of eighteen percent (18%) per annum or the highest rate not prohibited by applicable law from

the date of such accelerated maturity until paid (both before and after any judgment).

Maker may prepay in full, but not in part, its entire indebtedness hereunder upon payment of the entire indebtedness plus an additional sum as a premium equal to the following percentages of the remaining principal balance for the indicated period:

Prior to the first annual anniversary date of this note: Not Allowed.

Thereafter and prior to the second annual anniversary date of this note: Six percent (6%)

Thereafter and prior to the third annual anniversary date of this note: Five percent (5%)

Plus all other sums due hereunder or under any Security Agreement

It is the intention of the parties hereto to comply with the applicable usury laws; accordingly, it is agreed that, notwithstanding any provision to the contrary in this Note or any Security Agreement, in no event shall this Note or any Security Agreement require the payment or permit the collection of interest in excess of the maximum amount permitted by applicable law. If any such excess interest is contracted for, charged or received under this Note or any Security Agreement, or if all of the principal balance shall be prepaid, so that under any of such circumstances the amount of interest contracted for, charged or received under this Note or any Security Agreement on the principal balance shall exceed the maximum amount of interest permitted by applicable law, then in such event (a) the provisions of this paragraph shall govern and control, (b) neither Maker nor any other person or entity now or hereafter liable for the payment hereof shall be obligated to pay the amount of such interest to the extent that it is in excess of the maximum amount of interest permitted by applicable law, (c) any such excess which may have been collected shall be either applied as a credit against the then unpaid principal balance or refunded to Maker, at the option of the Payee, and (d) the effective rate of interest shall be automatically reduced to the maximum lawful contract rate allowed under

---

applicable law as now or hereafter construed by the courts having jurisdiction thereof. It is further agreed that without limitation of the foregoing, all calculations of the rate of interest contracted for, charged or received under this Note or any Security Agreement which are made for the purpose of determining whether such rate exceeds the maximum lawful contract rate, shall be made, to the extent permitted by applicable law, by amortizing, prorating, allocating and spreading in equal parts during the period of the full stated term of the indebtedness evidenced hereby, all interest at any time contracted for, charged or received from Maker or otherwise by Payee in connection with such indebtedness; provided, however, that if any applicable state law is amended or the law of the United States of America preempts any applicable state law, so that it becomes lawful for the Payee to receive a greater interest per annum rate than is presently allowed, the Maker agrees that, on the effective date of such amendment or preemption, as the case may be, the lawful maximum hereunder shall be increased to the maximum interest per annum rate allowed by the amended state law or the law of the United States of America.

The Maker and all sureties, endorsers, guarantors or any others (each such person, other than the Maker, an "**Obligor**") who may at any time become liable for the payment hereof jointly and severally consent hereby to any and all extensions of time, renewals, waivers or modifications of, and all substitutions or releases of, security or of any party primarily or secondarily liable on this Note or any Security Agreement or any term and provision of either, which may be made, granted or consented to by Payee, and agree that suit may be brought and maintained against any one or more of them, at the election of Payee without joinder of any other as a party thereto, and that Payee shall not be required first to foreclose, proceed against, or exhaust any security hereof in order to enforce payment of this Note. The Maker and each Obligor hereby waives presentment, demand for payment, notice of nonpayment, protest, notice of protest, notice of dishonor, and all other notices in connection herewith, as well as filing of suit (if permitted by law) and diligence in collecting this Note or enforcing any of the security hereof, and agrees to pay (if permitted by law) all expenses incurred in collection, including Payee's actual attorneys' fees.

**THE MAKER HEREBY UNCONDITIONALLY WAIVES ITS RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF, DIRECTLY OR INDIRECTLY, THIS NOTE, ANY OF THE RELATED DOCUMENTS, ANY DEALINGS BETWEEN MAKER AND PAYEE RELATING TO THE SUBJECT MATTER OF THIS TRANSACTION OR ANY RELATED TRANSACTIONS, AND/OR THE RELATIONSHIP THAT IS BEING ESTABLISHED BETWEEN MAKER AND PAYEE. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT (INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS.) THIS WAIVER IS IRREVOCABLE MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THE WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS NOTE, ANY RELATED DOCUMENTS, OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THIS TRANSACTION OR ANY RELATED TRANSACTION. IN THE EVENT OF LITIGATION, THIS NOTE MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.**

This Note and any Security Agreement constitute the entire agreement of the Maker and Payee with respect to the subject matter hereof and supersedes all prior understandings, agreements and representations, express or implied.

No variation or modification of this Note, or any waiver of any of its provisions or conditions, shall be valid unless in writing and signed by an authorized representative of Maker and Payee. Any such waiver, consent, modification or change shall be effective only in the specific instance and for the specific purpose given.

Any provision in this Note or any Security Agreement which is in conflict with any statute, law or applicable rule shall be deemed omitted, modified or altered to conform thereto.

**Acorda Therapeutics, Inc.**

By: /s/ Ron Cohen

(Witness)

Name: Ron Cohen

(Print name)

Title: President—CEO

(Address)

Federal Tax ID #: 13-3831168

Address: 15 Skyline Dr., Hawthorne, Westchester County, NY 10532

Consent of Independent Registered Public Accounting Firm

The Board of Directors  
Acorda Therapeutics, Inc:

We consent to the use of our report dated October 3, 2005, except for Note (16) (as to the effects of a reverse stock split) which is as of October , 2005 with respect to the consolidated balance sheets of Acorda Therapeutics, Inc. and subsidiary as of December 31, 2004 and 2003, and the related consolidated statements of operations, stockholders' (deficit), and cash flows for the year ended December 31, 2004, the six-month period ended December 31, 2003, and years ended June 30, 2003 and 2002, included in the registration statement on Form S-1 of Acorda Therapeutics, Inc. filed on October 4, 2005 and to the reference to our firm under the headings "Experts" and "Selected Consolidated Financial Data" in the prospectus.

/s/ KPMG LLP

Short Hills, New Jersey  
October 3, 2005

---

---

**End of Filing**

Powered By **EDGAR®**  
Online®

**© 2005 | EDGAR Online, Inc.**